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Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

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Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the forty-ninth report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, submitted pursuant to General Assembly resolution 71/95.

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Summary

The present report contains information regarding the efforts of the Special Committee to implement its mandate and on the human rights situation in the occupied Arab territories over the past year. The report includes information on consultations with Member States in Geneva in March 2017, followed by a mission to Jordan in July 2017. The report addresses a number of concerns related to respect for international humanitarian law and international human rights law, including, specifically, the ongoing blockade of Gaza and the resulting humanitarian crisis; the continued expansion of settlements; the practice of demolishing homes, particularly as a punitive measure; the coercive environment and risk of forcible transfer to vulnerable Palestinian Bedouin communities in Area C; the situation of Palestinians living in East Jerusalem and the use of collective punishment; the continued use of administrative detention; concerns regarding the excessive use of force and the subsequent lack of accountability for Israeli forces; and the work of human rights defenders. The Special Committee further examines issues relating to the expansion of Israeli settlements and the lack of development opportunities for Syrian villagers in the occupied Syrian Golan.

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I. Introduction

1. The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories was established in 1968 by the General Assembly in its resolution 2443 (XXIII). The Special Committee is currently composed of three Member States: Sri Lanka, Malaysia and Senegal. In 2017, the Special Committee was represented by three members, Shahrul Ikram Yaakob, Permanent Representative of Malaysia to the United Nations in New York (Acting Chair), Ahamed Lebbe Sabarullah Khan, Deputy Permanent Representative of Sri Lanka to the United Nations in New York, and Coly Seck, Permanent Representative of Senegal to the United Nations Office at Geneva.

II. Mandate

2. The mandate of the Special Committee, as set out in General Assembly resolution 2443 (XXIII) and subsequent resolutions, is to investigate Israeli practices affecting the human rights of the Palestinian people and other Arabs of the occupied territories. The occupied territories are considered those remaining under Israeli occupation since 1967, namely, the occupied Syrian Golan and the Occupied Palestinian Territory, which comprises the West Bank, including East Jerusalem, and the Gaza Strip.

3. The present report is submitted pursuant to General Assembly resolution 71/95, which requested the Special Committee, pending complete termination of the Israeli occupation, to continue to investigate Israeli policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967, especially Israeli violations of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and to consult, as appropriate, with the International Committee of the Red Cross according to its regulations in order to ensure that the welfare and human rights of the peoples of the occupied territories, including prisoners and detainees, are safeguarded and to report to the Secretary-General as soon as possible and whenever the need arises thereafter. The present report covers the period from 30 July 2016 to 14 July 2017.

III. Activities of the Special Committee

A. Consultations with Member States in Geneva

4. The Special Committee held its annual consultations in Geneva on 20 and 21 March 2017 with Member States concerned with the implementation of General Assembly resolution 71/95. The consultations were held with a view to discussing the most pressing matters to be addressed in the Special Committee's report to the Assembly and to gather information on recent developments in the human rights situation.

5. The Special Committee met with the Permanent Observer of the State of Palestine, the Permanent Representatives of the Syrian Arab Republic, Egypt, Jordan, Lebanon and Turkey and the Permanent Observer of the Organization of Islamic Cooperation. The Committee also met with the United Nations High Commissioner for Human Rights. A request to meet with the Permanent Representative of Israel to the United Nations Office at Geneva received no response. The Special Committee also followed the discussions under agenda item 7 of the Human Rights Council, entitled "Human rights situation in Palestine and other occupied Arab territories".

6. During the discussions, representatives of Member States expressed support for the work of the Special Committee and regretted the fact that Israel does not recognize and cooperate with the Committee, nor allow it access to the Occupied Palestinian Territory. The representative of the Permanent Mission of the Syrian Arab Republic reiterated the Government's invitation to the Committee to visit the region and meet with Syrians who have been forcibly displaced from the occupied Syrian Golan. Member States emphasized the role of the international community and of United Nations mechanisms in keeping the issue of the Israeli occupation on the agenda and pressuring Israel to uphold its international obligations.

7. The representatives of Member States were especially concerned at the deterioration of the humanitarian situation in the Gaza Strip, as well as the growing hopelessness and frustration among its residents, noting that 2017 marks the tenth year of the blockade by Israel. They were also concerned at what they described as the seeming aspiration of Israel to annex the West Bank, noting proposed legislation put forward by Israeli lawmakers in the previous year, as well as accelerated construction of Israeli settlements and an increase in demolitions of Palestinian homes in the West Bank, including East Jerusalem.

8. The Special Committee was further briefed on the work of the Office of the United Nations High Commissioner for Human Rights (OHCHR) regarding the human rights situation in the Occupied Palestinian Territory, as well as the forthcoming reports of the Office to the Human Rights Council.

9. The above input received from Member States was taken into consideration when planning and conducting the field mission of the Special Committee, undertaken in July 2017, as well as in the drafting of the present report.

B. Field mission to investigate Israeli practices

10. The Special Committee wrote to the Government of Israel on 12 May 2017 requesting access to the Occupied Palestinian Territory and other Arab territories occupied since 1967. As in previous years, no response to the request was received from Israel. The Special Committee was thus unable to hold consultations with the relevant Israeli authorities, or to gain access to the Occupied Palestinian Territory.

11. Owing to increased insecurity in the region, the Special Committee was not able to visit either the Syrian Arab Republic or Gaza via the Rafah crossing. Instead, it convened meetings with civil society, witnesses, representatives of Bedouin and refugee communities, Palestinian officials and United Nations representatives in Amman from 12 to 14 July 2017.[1] In a few instances, where witnesses were unable to travel to Amman, especially from Gaza owing to the denial of travel permits, the Special Committee gathered testimony and briefings by teleconference. The Special Committee expresses its sincere appreciation to all those who provided testimony and briefings on a wide range of human rights and humanitarian issues. On 17 July, at the end of its annual mission, the Special Committee released a press statement.[2]

12. Documentation and other materials submitted to the Committee were carefully examined prior to the preparation of the present report and were archived by the

[1] Coly Seck, Permanent Representative of Senegal to the United Nations in Geneva, was represented by Serigne Dieye, Chargé d'affaires, Permanent Mission of Senegal to the United Nations Office at Geneva, on this mission.

[2] Office of the United Nations High Commissioner for Human Rights (OHCHR), end of mission statement of the United Nations Special Committee to Investigate Israeli Practices, 17 July 2017. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21881&LangID=E.

Secretariat. Information contained in the report is based primarily on testimony and submissions received by the Special Committee over the course of its mission in July 2017.

IV. Situation of human rights in the Occupied Palestinian Territory

13. The Special Committee heard concerns on a wide range of issues during its meetings with representatives of civil society, victims and witnesses, United Nations agencies, and the Palestinian Government. Overall, in the West Bank, including East Jerusalem, as well as in Gaza, briefings to the Committee noted an increasing sense of hopelessness among Palestinians. After 50 years of occupation and a steadily deteriorating human rights and humanitarian situation in recent years, coupled with the stalled peace process, Palestinians are losing hope for the future. Briefings to the Committee emphasized, in particular, how this situation negatively impacts the young. Specific areas of concern highlighted throughout the mission included the humanitarian crisis in Gaza and concerns about de-development; the expansion of settlements in the West Bank, including East Jerusalem, coupled with home demolitions and the ongoing risk of forcible transfer; ill-treatment in detention, including of minors, and the ongoing use of administrative detention; an atmosphere of impunity and lack of accountability on the part of Israeli forces; and an environment that is increasingly hostile to human rights defenders who seek to shed light on these concerns.

A. Humanitarian crisis in Gaza

14. Nearly all briefings to the Committee highlighted the dire situation in Gaza, now under the tenth year of illegal blockade and closure, a measure which several organizations stressed is a form of collective punishment and a violation of international humanitarian law. The briefings emphasized that the humanitarian crisis and economic stagnation in Gaza — brought on by the blockade and a series of escalations of hostilities, most recently in 2014 — has now become acute, compounded by the electricity crisis ongoing at the time of the Committee's mission. Through much of July 2017, residents of Gaza had access to as little as two hours of electricity per day, with cuts lasting from 20 to 22 hours at a time. Briefings to the Committee reiterated the need for Israel to uphold its humanitarian obligations, as the occupying power in control of the entry and exit of people and goods to Gaza.

15. The impact of the electricity crisis on the already strained health and sanitation infrastructure was one of the key issues highlighted to the Committee. At the time of reporting, hospitals had been forced to reduce services, and access to essential care was limited. Sanitation services were likewise negatively impacted — one example of this cited to the Committee was that, without power, the sewage treatment plant could not function, and as much as 110 million litres of completely untreated sewage were being dumped into the sea each day during the crisis. Many beaches became contaminated and unusable, and several briefings highlighted the fact that, at the height of summer, in part owing to the lack of air conditioning, children were still seen swimming in the extremely polluted water. Pollution is also accelerating in the main groundwater source in Gaza, with only 3.8 per cent of the water from the Strip's aquifer predicted to be safe to drink (compared with 10 per cent in 2012).[3] This

[3] United Nations, "Gaza ten years later: United Nations Country Team in the occupied Palestine Territory" (July 2017), p. 3. Available from https://unsco.unmissions.org/sites/default/files/gaza_10_years_later_-_11_july_2017.pdf.

combination of deteriorating sanitation conditions, together with limited capacity in hospitals and health facilities, was noted as extremely worrying.[4]

16. It was emphasized in briefings to the Committee that the humanitarian crisis in Gaza is a human-made crisis which predates the onset of the most recent electricity shortage. The humanitarian situation has, since the start of the blockade and after several escalations in hostilities, been steadily worsening. United Nations agencies noted in their briefings to the Committee that, since a 2012 report questioning whether Gaza might become unliveable by 2020,[5] the situation has deteriorated even further and faster than anticipated.[6] Development and even basic maintenance of infrastructure has been strained or made impossible by limitations on the import and export of materials imposed by Israel.[7]

17. The Committee heard how the resulting economic stagnation, including extremely high unemployment rates, particularly among youth, is contributing to a growing atmosphere of frustration and hopelessness for residents of Gaza. According to data reported by the Office for the Coordination of Humanitarian Affairs, unemployment in Gaza currently stands at 42 per cent, while among youth it amounts to 58 per cent. Some 47 per cent of Gaza residents are food insecure, and a significant number rely on foreign aid and assistance. The 2017 Humanitarian Response Plan of the Office for the Coordination of Humanitarian Affairs, which funds humanitarian assistance for vulnerable populations in Gaza and Area C of the West Bank, as well as East Jerusalem, was reportedly only 40 per cent funded as at the time of the Special Committee's mission.

18. In addition to controlling the entry and exit of goods and materials to Gaza across the Erez crossing, Israel controls the movement of people through the crossing. An increase in denial of exit permit applications for Gaza residents was highlighted to the Committee as an issue of increasing concern from both a humanitarian and human rights perspective. Regarding access to health care, the Committee was briefed about an increased rate of denial of permits for patients seeking medical treatment outside Gaza.[8] The Committee was also informed that the monthly rate of permit applications that went unanswered almost doubled in the second half of 2016; from 20.8 per cent to 38 per cent. Denial or even delay of such permit requests can have tangible and even deadly consequences for patients, as necessary medical care is delayed and appointments are missed. One incident shared with the Committee was the death in January 2017 of a 17-year-old boy with a congenital heart condition. The boy had missed three medical appointments owing to either denial of his permit requests or delay in granting the requests.

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[4] There is currently a shortage of over 1,000 doctors and over 1,000 hospital beds in Gaza. See United Nations, "Gaza ten years later", p. 3.

[5] See United Nations, "Gaza in 2020: a liveable place? A report by the United Nations country team in the occupied Palestinian Territory" (August 2012). Available from https://www.unrwa.org/userfiles/file/publications/gaza/Gaza%20in%202020.pdf.

[6] See United Nations, "Gaza ten years later", p. 3.

[7] "In 2016 total exports and transfers of goods from Gaza remained less than 20 per cent of what it had been in the first half of 2007, in part due to continued export restrictions and in part due to restrictions on import of material and equipment necessary for local production." See United Nations, "Gaza ten years later", p. 8.

[8] According to the Office for the Coordination of Humanitarian Affairs, there was a decline in the overall approval rate for permits granted to patients, from 77 per cent in 2015 to 64 per cent in 2016. See Office for the Coordination of Humanitarian Affairs, "50 years of occupation: Occupied Palestinian Territory: fragmented lives — humanitarian overview 2016" (May 2016), p. 7. Available from https://www.ochaopt.org/sites/default/files/fragmented_lives_2016_english.pdf.

19. The increase in denial of exit permits is not limited to medical patients, the Committee was told. This trend has also impacted businesspeople[9] and humanitarian workers, including United Nations staff. The Office for the Coordination of Humanitarian Affairs observed that, for national staff of aid organizations (including the holders Gaza, West Bank and East Jerusalem identify documents), 31 per cent of applications for permits to enter or exit Gaza were denied in 2016, compared with 4 per cent in 2015.[10] Several briefings to the Committee highlighted the essential role played by humanitarian organizations in providing food and services, including medical care and education for Gaza residents, and noted that Israeli practices that create obstacles to this work were particularly concerning.

B. Settlement expansion

20. Many submissions made to the Special Committee noted with concern the recent acceleration in expansion of settlements — considered illegal under international law — in the West Bank, including East Jerusalem. The Special Committee was informed that 2016 saw a 40 per cent increase in the construction of housing units as compared with 2015, with 1,760 units begun and 2,630 units completed. Submissions further highlighted an increase in approvals for planned settlement units in East Jerusalem over 2016–2017 compared to the previous two years, noting that more than 1,500 units were approved in 2016, and an additional 560 were approved over the first half of 2017. The Committee was also informed of reports of July 2017 that the Government of Israel may shortly begin planning the construction of over 7,000 new units in East Jerusalem, as well as the announcement earlier in 2017 of the first new settlement in the West Bank to be constructed since the 1990s.[11]

21. As noted in several submissions to the Special Committee, beyond the immediate infringement upon Palestinian lands, further settlement construction has additional detrimental impacts on the human rights of Palestinians in the West Bank, including East Jerusalem. Restrictions on the freedom of movement for Palestinians are often significant, with settlements accompanied by the construction of roads that are only accessible to Israelis. This further fragments the West Bank and can disrupt Palestinians' access to jobs, schools and family. Some described to the Committee the checkpoints that are installed near settlements, which make movement difficult, sometimes preventing children from reaching their schools, and which can be flashpoints for violence.

22. The Committee was told that boundaries of settlements in some cases are set to encompass Palestinian agricultural land, water wells and other resources, thus having a negative impact on the livelihood of neighbouring Palestinians. Palestinian communities located in close proximity to settlements are also subject to frequent raids by Israeli forces, often during the night and the early hours of the morning. Testimony to the Committee noted the negative impact that this can have on the mental health of residents of these communities, in particular, children. In addition, there is a risk that violence may be perpetrated by settlers against neighbouring Palestinian communities. Overall, the construction of settlements and the Wall, it was noted, further infringe and divide the Palestinian Territory, thus undermining the viability of the two-State solution. The Special Committee denounces the ongoing expansion of illegal settlements in the Occupied Palestinian Territory.

[9] The Office for the Coordination of Humanitarian Affairs reported a 16 per cent decline in permits issued for businesspeople compared to 2016. See Office for the Coordination of Humanitarian Affairs, "50 years of occupation", p. 7.

[10] Ibid.

[11] Figures in this section come from the submission of the Norwegian Refugee Council to the Special Committee, July 2017.

23. These developments with respect to settlement expansion, it was held in some submissions, should be seen as particularly concerning in the light of a number of recent legislative developments. In February 2017, the Government of Israel passed what was referred to as the "regularization bill", which retroactively legalized, under domestic law, "outposts" built on private Palestinian land in the occupied West Bank which were previously unrecognized under Israeli domestic law.[12] There are, in addition, several proposed laws that seek to apply Israeli law to the Occupied Palestinian Territory, in contravention of international humanitarian law.[13] Examples of these types of legislation presented to the Committee include the proposed annexation law relating to the settlement of Ma'ale Adumim, the Greater Jerusalem law, aimed at redefining and expanding the municipal borders of Jerusalem, and the norms law, which would seek to apply all new legislation passed by the Knesset in the Occupied Palestinian Territory as well.

24. According to one analysis presented to the Special Committee, the accelerated construction of settlements, together with these legislative efforts, indicate the intention of Israel to annex the Occupied Palestinian Territory, in direct violation of international law. According to another analysis heard by the Special Committee, this action amounts to colonization of the Occupied Palestinian Territory by Israel, which is also prohibited under international law.

C. Environment and access to natural resources

25. The Committee was briefed about environmental degradation in the Occupied Palestinian Territory due to exploitation of natural resources, as well as the lack of access for Palestinians to important natural resources, a factor which stifles Palestinians' right to development.

Access to water

26. Access to water was highlighted as a key issue of concern for Palestinians in both the West Bank and Gaza. According to information received, Palestinians struggle to gain access to necessary water resources, as these resources are overexploited by Israel. The Environment Quality Authority observed that Israel uses roughly 80 per cent of subterranean water resources in the Occupied Palestinian Territory and noted that Israeli settlers receive seven times more water than that allotted for Palestinians.

27. Overexploitation of subterranean water resources, for example through a number of wells constructed just along the Gaza border, has reportedly led, in Gaza, to increasing salinity of the existing aquifers. Owing to the electricity crisis and deterioration of existing infrastructure, desalination is not always possible. In the West Bank, Palestinian wells have been confiscated as a result of appropriation of land due to the construction of the Wall, of settlements, of natural reserves and of closed military zones.[14]

Environmental impact of the wall

28. The impact of the construction of settlements and the Wall on the environment in the West Bank was noted to the Committee as another issue of concern. In

[12] Settlements and outposts are both considered illegal under international law. Under this legislation, previously unrecognized outposts, built without the formal support of the Government of Israel, are retroactively legalized under Israeli domestic law.

[13] See Regulations respecting the Laws and Customs of War on Land (Hague Regulations), art. 43.

[14] In some cases, reportedly, areas initially designated by Israel as natural reserves, inaccessible to Palestinians, are later declared closed military zones. They remain inaccessible to Palestinians, and the natural life therein is not protected.

submissions to the Committee made by the Environment Quality Authority, it was noted that the ongoing construction of the Wall, which was declared illegal under international law by the International Court of Justice in 2004, had reached the southern part of the West Bank, near the town of Beit Jala. The Wall is said to be an obstacle to the daily lives of Palestinian residents, separating farmers from their lands and preventing people from accessing their places of worship. Also highlighted to the Committee was the fact that, as the wall is constructed, homes that are in its path are destroyed. In addition, case studies presented to the Committee described the change in water flows caused by the Wall in some cases, and noted the change in environment and habitat and the detrimental impact that had had in some cases on local flora and fauna in areas through which the Wall passes.

Wastewater

29. Dumping of wastewater in the Occupied Palestinian Territory was described to the Committee as a frequent practice, with wastewater from the settlements and in some cases from Israel reportedly being dumped in various areas in the West Bank. According to briefings to the Committee, polluted water is both changing the environment — areas previously dry are now flooded — and polluting it, putting both local wildlife and Palestinian residents at risk. A Palestinian refugee representative from the Bethlehem area briefed the Committee about challenges faced by his community, and noted that wastewater from Israeli settlements is often dumped in close proximity to refugee camps in his area.

D. Demolitions

30. The Special Committee was informed that home demolitions and destruction of livelihood-related structures have continued over the past year.[15] In 2016, the number of demolitions was the highest recorded since the United Nations began collecting such data in 2009. During the first half of 2017, the levels have decreased, with 279 structures demolished between January and mid-July, leading to the displacement of 435 Palestinians.[16] Despite the decrease in 2017, these figures nevertheless remain concerning. The Special Committee recalls that Israel, as the occupying Power, is obligated to administer the Palestinian territory for the benefit of the protected Palestinian population.[17] International humanitarian law sets out strict conditions under which the destruction of private property and relocation of the protected population may be lawful, related exclusively to military necessity or the security of the population.[18] As noted in briefings to the Committee, Israel cites either administrative or punitive reasons as the basis for carrying out demolitions.

Administrative demolitions

31. Administrative demolitions occur in cases in which Palestinians' homes and other structures are built without Israeli-issued permits. As highlighted to the

[15] During the reporting period, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) recorded 754 demolitions of Palestinian structures.

[16] See United Nations Office for the Coordination of Humanitarian Affairs, "Protection of civilians weekly report, 4–17 July 2017". Available from https://www.ochaopt.org/content/protection-civilians-weekly-report-4-17-july-2017. This figure includes demolitions in the West Bank, including East Jerusalem. The specific situation of East Jerusalem is discussed in greater detail in section F of the present report.

[17] This principle was affirmed in the Declaration of the Conference of High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) of 17 December 2014.

[18] Fourth Geneva Convention, arts. 49 and 53.

Committee, Israel has established a discriminatory planning and zoning regime in the West Bank, including East Jerusalem, to regulate building. Permits are in many cases nearly impossible to obtain for Palestinian residents, in part due to prohibitive costs and lengthy administrative proceedings. Structures at risk of demolition include homes, schools, medical clinics and livelihood assets (including for example structures related to farming and agricultural work). All demolitions result in either displacement or deprivation of access to livelihoods for Palestinians.

32. Notably, some demolitions affect donor-funded humanitarian assistance to vulnerable communities, with briefings to the Committee highlighting that 79 donor-funded structures were demolished between 1 January and 20 June 2017.[19] Confiscation of donor-funded humanitarian assistance such as solar panels by the Israeli authorities was also documented by organizations briefing the Committee. In this context, briefings to the Committee highlighted the obligation of Israel, as the occupying Power, to provide for the humanitarian needs of the protected population, as well as to agree to relief schemes on behalf of the said population and to facilitate those relief schemes by all the means at its disposal.[20] Confiscation and destruction of donor-funded humanitarian assistance is an ongoing practice of concern, also reported to the Special Committee during its 2016 mission.[21]

Punitive demolitions

33. The practice of punitive demolitions, which was reinstated by the Israeli Security Cabinet in October 2015, has continued during the reporting period. The Israeli authorities have reportedly cited deterrence as the reason for carrying out punitive demolitions, which affect the family homes of Palestinians who attack or allegedly attack Israelis. In 2016, 29 punitive demolitions displacing 156 Palestinians, including 65 children, were documented.[22] The Special Committee notes that the practice of punitive demolitions violates international law, including the prohibition on collective punishment, and must be rescinded.[23]

E. Coercive environment and risk of forcible transfer

34. The Special Committee was briefed on the situation of vulnerable communities at risk of forcible transfer, in particular 46 Bedouin communities living in rural parts of Area C of the West Bank. These communities are subject to a coercive environment and remain at risk of forcible transfer by the Israeli authorities to three planned "townships", a concern which was also highlighted to the Special Committee during previous missions.[24] The more than 7,000 people living in these rural communities, a vast majority of whom are Palestinian refugees, are facing the possibility of being forcibly relocated to urban-style pre-planned communities, which would deprive them of their traditional way of life and livelihoods.

35. The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) provided an update to the Committee on the situation of one of these communities, Abu Nawar, on which the Committee was briefed during its 2016 mission.[25] There are over 250 demolition orders outstanding for this community and,

[19] Submission from the Norwegian Refugee Council to the Special Committee, 13 July 2017.
[20] Fourth Geneva Convention, art. 59.
[21] See A/71/352, paras. 17–21.
[22] Office for the Coordination of Humanitarian Affairs, "50 years of occupation", p. 6.
[23] The practice of punitive demolitions contravenes article 33 of the Fourth Geneva Convention, which prohibits collective punishment.
[24] See A/71/352, paras. 22–33.
[25] Ibid., paras. 28–31.

from May 2016 until the Committee's briefing in July 2017, the community's schoolroom had been demolished and an instance of confiscation of humanitarian relief had been reported. UNRWA emphasized that the situation of the community had not improved since its briefing to the Committee in 2016. This community continues to experience extremely strong pressure for its members to leave their homes.

36. The situation of the Khan al-Ahmar Abu Al Helu community, another of the vulnerable Bedouin communities, was also highlighted as an example of a community under extreme pressure. UNRWA noted that 44 stop-work orders were issued for all existing structures in the community of Khan al-Ahmar in February of 2017. Those orders were subsequently converted into demolition orders, placing the entire community at risk of demolition. The demolition orders cover homes as well as the school, built with donor-funded assistance.

37. A further example shared by UNRWA notes the situation of Khan al-Ahmar Kurshan. On 9 October 2016, the Israeli Civil Administration demolished 11 residential structures, a chicken pen, 11 water tanks, 3 external bathrooms, 2 external kitchens and 1 fence in this community, resulting in the displacement of nine families (made up of 47 individuals including 26 children). One third of the tents provided as humanitarian assistance after the demolitions were confiscated the following day. At the time of reporting, the community has not been able to receive the necessary humanitarian assistance, owing to pressure applied by the Israeli authorities.

38. The situation of a collection of communities in western Bethlehem was also highlighted to the Committee in testimony shared by a refugee representative from one of these communities. Of the seven Palestinian villages in the area, the population of three of them is made up of a majority of refugees. Settlement expansions in the area are leading to increasing pressure on Palestinian communities, with the Israeli population now three times the Palestinian population. Zoning restrictions prohibit the development and expansion of Palestinian villages in the area, stifling their natural growth, and settlement construction in the northern part of the village is threatening to prevent Palestinian farmers from accessing their agricultural lands.

39. The Committee received information that these conditions — demolition or threat of demolition, extreme pressure to leave and reports of harassment and intimidation — combine to create a coercive environment. Under such conditions, communities may feel that they have no choice but to leave, a move which could amount to forcible transfer, given the lack of genuine consent to relocation. Forcible transfer in the context of occupation, undertaken without the free, prior and informed consent of the affected individuals, is prohibited as a grave breach of the Geneva Conventions.[26] Such a move would further raise concerns about forced eviction and destruction of private property, in contravention of the obligations of Israel under international human rights and humanitarian law.

[26] Fourth Geneva Convention, art. 49.

F. East Jerusalem

40. The situation of East Jerusalem was raised as an issue of particular concern to the members of the Committee in several briefings. East Jerusalem residents face a host of issues, including residency revocation, a discriminatory planning and building regime and demolitions, among other things. Submissions to the Special Committee mentioned with great concern what were described as attempts to alter the demographic balance in East Jerusalem, which reportedly currently stands at approximately 40 per cent Palestinian residents.

41. For those that live in East Jerusalem, briefings to the Committee highlighted challenges associated with what was described as the discriminatory planning and zoning regime in place. According to information received, only 13 per cent of lands in East Jerusalem are zoned for development by Palestinians. Only 7 per cent of building permits applied for are given to Palestinians, meaning that the existing living space is overcrowded and the infrastructure is strained. Palestinians who build without permits risk having their homes demolished or being forced to demolish their homes themselves in order to avoid having to pay the demolition fees charged to Palestinians by the Israeli authorities.

Residency revocation

42. The Committee was briefed on the permit system in East Jerusalem, in which Palestinians must obtain residency status from Israel in order to live in East Jerusalem. Palestinian residents of East Jerusalem are not considered citizens, and thus may not vote in national elections, although they may vote in local elections. In order to maintain their residency status, Palestinians living in East Jerusalem must not leave the city for more than seven years, and often must provide documentation, occasionally on a recurring basis, to prove that the city is their "centre of life". Obtaining another nationality, even if one still maintains a home and is regularly present in East Jerusalem, could lead to the loss of one's East Jerusalem residency permit. A residence elsewhere in the West Bank would reportedly qualify as an outside residence under these regulations.

43. Furthermore, as noted to the Committee, according to the 2003 "Citizenship and Entry into Israel law" — a temporary order that has now been renewed 14 times — Palestinians with West Bank or Gaza permits who marry East Jerusalem residents may only be granted temporary permits to live in East Jerusalem that must be renewed each year. This policy reportedly places a significant strain on Palestinian families, and in many cases may lead to family separation, or force families to give up their homes in East Jerusalem in order to live together elsewhere. It was emphasized to the Committee that such restrictions infringe the right to family life.[27] According to information received, the Ministry of Interior of Israel systematically revokes the status of Palestinian residents of East Jerusalem, both as an administrative and occasionally as a punitive measure, a process in which thousands of Palestinian residents have already lost their residency rights. Administrative residency revocation can occur in various cases, including when the "centre of life" requirement is not met, or when a Palestinian resident of Jerusalem lives outside Jerusalem for more than seven years (this can include living in the West Bank).

44. One case described to the Committee by the Jerusalem Community Action Center was that of Manwah Qunbar, the mother of a Palestinian involved in an attack

[27] Article 12 of the Universal Declaration of Human Rights provides that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence". A similar provision is found in article 17 (1) of the International Covenant on Civil and Political Rights.

on Israelis, whose Jerusalem residency was revoked in January 2017.[28] This is the first case in which Israel has punitively revoked the residency of a family member of an attacker or alleged attacker, and was noted to the Committee as a development of concern. Furthermore, in the aftermath of the attack, a number of residents of the neighbourhood of Mr. Qunbar were arrested, including five of his family members, and checkpoints and road closures were set up around the neighbourhood. These types of measures were described to the Committee as practices amounting to illegal collective punishment.

45. Reportedly, the Minister of Interior of Israel may also revoke the residency of Palestinians for "breach of allegiance to the State of Israel". This policy, which makes Palestinians who have never left Jerusalem vulnerable to residency revocation, is particularly concerning as, according to submissions to the Committee, it is in violation of international humanitarian law, which forbids an occupying power from requiring allegiance of the protected population.[29] In June 2006, the residencies of three members of the Palestinian Legislative Council were reportedly revoked on these grounds. A petition to the Israeli High Court of Justice challenging the authority of the Minister of Interior to revoke residency on these grounds is reportedly still pending before the Court at the time of reporting.

46. According to analysis presented to the Committee, residency revocation for punitive or administrative reasons may amount to forcible transfer, in violation of international humanitarian law. Revocation of residency status for punitive reasons may also amount to collective punishment, for example when status is revoked from family members in retaliation for the actions of one individual.

Punitive measures

47. Punitive measures against relatives of attackers or alleged attackers in East Jerusalem are not limited to residency revocation. Briefings to the Committee described situations in which families of attackers or alleged attackers have faced punitive home demolitions or home sealings in East Jerusalem. In some cases, Palestinian families are reportedly required to reimburse the Government of Israel for the costs of the demolitions. Palestinian families in East Jerusalem have reportedly been asked to reimburse the Government of Israel for the compensation it gives to Israeli families who have lost family members in attacks or alleged attacks by Palestinians. East Jerusalem residents may also reportedly face punitive revocation of benefits, such as access to basic health insurance, to which they are entitled as part of their East Jerusalem residency.

48. One case that was highlighted to the Special Committee and that demonstrates a number of punitive policies to which residents of East Jerusalem are susceptible is that of Nadia Abu Jamal, a woman whose husband was involved in an attack in November 2014.[30] After the attack, the Government of Israel revoked Ms. Abu Jamal's family unification permit to live in East Jerusalem.[31] However, her three children are East Jerusalem residents. The health insurance of Ms. Abu Jamal's three children, two of whom have chronic health conditions which require care, was also revoked at that time. According to the briefing to the Committee, Ms. Abu Jamal was

[28] See http://www.maannews.com/Content.aspx?id=774845 and www.ochaopt.org/content/concern-about-collective-punishment-new-measures-targeting-residency-rights-east-jerusalem.

[29] Hague Regulations, art. 45. See https://ihl-databases.icrc.org/ihl/WebART/195-200055?OpenDocument.

[30] See www.btselem.org/jerusalem/20150618_nadia_abu_jamal_threatened_deportation_from_jm and www.alhaq.org/documentation/weekly-focuses/1100-illegal-collective-punishment-measures-against-women-and-children-the-case-of-nadia-abu-jamal-and-her-family.

[31] See www.amnesty.org/download/Documents/MDE1500372014ENGLISH.pdf.

forcibly transferred to the West Bank on 17 January 2017, while her children now live in East Jerusalem with their grandparents.

G. Detention

49. The Committee's mission to Amman took place some months after the cessation of a mass hunger strike by Palestinian detainees in Israeli prisons, which began in April 2017 and lasted for 40 days. In submissions to the Committee it was noted that over 1,500 Palestinian detainees in Israeli prisons participated in the strike over the course of the 40-day period. The Higher National Commission for Prisoners and Detainees Affairs of the Government of Palestine, in its briefing to the Committee, emphasized that the hunger strikers' demands related to basic humanitarian concerns. The detainees called for improved living conditions, including better access to medical care and education, an increase in the number of family visits each month and an end to the practice of administrative detention.

50. According to the Higher National Commission for Prisoners and Detainees Affairs and others who briefed the Committee, the Israel Prison Service treated the detainees who went on strike harshly, and tried to break the strike by subjecting participants to punitive measures, including denial of appropriate medical attention, frequent transfers between prison facilities and solitary confinement. Furthermore, the Commission noted the possibility of future hunger strikes, citing limited implementation of the agreement reached at the conclusion of the strike.

Administrative detention

51. In submissions received by the Special Committee, concern was expressed over the fact that the practice of administrative detention continues, with, reportedly, over 500 Palestinians currently held under administrative detention orders. Administrative detention orders are issued for periods of six months and are renewable indefinitely. Detainees are held without charge or trial, often on the basis of secret evidence which is never disclosed to the detainees or to their attorneys and which they do not have the opportunity to challenge. Particular concern was expressed to the Committee about the fact that detainees can be held for months, and even years, on these regularly renewed orders, in violation of international legal standards. It was noted that the Israeli practice of administrative detention is not in compliance with key international human rights safeguards, nor does it comply with international humanitarian law, which specifies that such measures should be used only in exceptional circumstances.[32]

52. With respect to administrative detention, concerns were also noted regarding the passage last June of a new counter-terrorism law.[33] The law reportedly went into effect in November 2016 and was described as overly broad and extremely concerning from a human rights perspective, as it grants broad powers to arrest and detain and contains an overly broad definition of terrorism.

Detention of children

53. The Special Committee also received information regarding the arrest and detention of children under 18, including several instances of arrest of children under the age of 14. According to information received by the Committee, 330 Palestinian

[32] Fourth Geneva Convention, art. 78, "If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment."

[33] See www.haaretz.com/israel-news/1.725225.

children were held in Israeli prisons as at May 2017, 3 of whom were being held under administrative detention orders. Concerns were also expressed to the Committee regarding legislation that allows for the detention of children under the age of 14.

54. During arrest and detention, children were reportedly often subjected to ill-treatment and violations of their right to due process. According to submissions received, the particularly vulnerable position of children and the associated protections to which they are entitled by human rights law are often not taken into account. Children have also reportedly been subject to night arrests in which they are taken from their homes late at night or in the early morning hours. Children were regularly interrogated without the presence of a parent or guardian or access to legal representation, while others reported having been physically abused and subject to the use of hand-ties, blindfolding and leg-ties. According to briefings heard by the Committee, many of these measures are employed in an attempt to pressure children to plead guilty.

55. One case reported to the Committee as being of special concern was that of a 17-year-old boy who was arrested in December 2016. During arrest, according to documentation by the prisoners' rights organization Addameer, he was blindfolded, beaten and taken to a military detention centre far from his home. He was given nothing other than water for 10 hours and subsequently held under a six-month administrative detention order.

56. Submissions to the Special Committee described the heavy burden borne by Palestinian families and Palestinian society as a whole due to the widespread use of arrest and incarceration, including of children. These practices require significant resources be devoted to rehabilitation and relief efforts for those eventually released, in particular young children who may be traumatized as a result of their experiences.

H. Excessive use of force

57. Testimonies heard by the Special Committee noted with particular concern what was described as excessive use of force by Israeli security forces. This reportedly occurred during instances of the use of live ammunition against groups of demonstrators, as well as in response to Palestinian attackers or alleged attackers, even after they no longer posed a threat. In addition, with respect to individual attackers, situations in which the threat posed often did not reach the threshold that would justify the use of deadly force were noted as a significant concern. Israeli security forces must seek to exercise restraint and respond proportionately to perceived threats. Security forces should seek to minimize damage or injury and respect and preserve human life.

58. In 2016, 99 Palestinians were killed in the West Bank, including East Jerusalem, and in Israel, 80 of whom were alleged perpetrators of attacks or attempted attacks against Israelis. [34] According to submissions received, as of 14 July 2017, 29 Palestinians had been killed by Israeli forces in 2017 in the West Bank, including East Jerusalem. According to submissions to the Committee, the Israeli security forces have employed what appears to be a de facto shoot-to-kill policy towards Palestinian civilians who carry out attacks against Israelis or are suspected of carrying out such attacks. This policy was said to be condoned by Israeli government officials and members of the security forces. Israeli forces have also reportedly withheld medical attention from suspected perpetrators after the fact.

59. The Committee was briefed on similar incidents of excessive use of force in Gaza. As part of the Israeli blockade on Gaza, Israel upholds an access-restricted area,

[34] Office for the Coordination of Humanitarian Affairs, "50 years of occupation", p. 4.

in the sea starting approximately six nautical miles off the coast of Gaza, as well as a "buffer" zone beginning 300 metres from the perimeter fence between Gaza and Israel. The army prohibits access to those areas, thus removing important sources of livelihood for Gazan fishermen and farmers. Those who enter the zones risk lethal retaliation from the Israeli army and navy, although they generally pose no immediate threat to the Israeli forces. In some cases, fishermen are reportedly shot at by the Israeli navy even when they have not left the six-nautical-mile limit. During 2016, 6 Palestinians were killed and 196 injured by the Israeli forces in those zones.[35] As at 14 July, four Palestinians have been killed by Israeli forces in Gaza in 2017.

60. One significant concern highlighted to the Committee in this respect is the impact of this violence on, and indeed the perpetration of violence against, Palestinian children. According to submissions made to the Committee, 35 Palestinian boys under 18 were killed in what were described as conflict-related incidents in 2016, and 887 Palestinian children were injured. According to information provided to the Committee, in many of the incidents in which children were killed, they did not appear to present an imminent threat, which again raises concerns of excessive use of force.

61. Information was also received by the Special Committee concerning allegations of excessive use of tear gas and other harsh measures by Israeli forces in reaction to non-violent protests or, in some cases, seemingly without provocation. In addition to tear gas, Israeli forces have reportedly used rubber-coated metal bullets or sponge-tipped bullets against protestors. These methods, in particular the indiscriminate and excessive use of tear gas, were noted to affect the entire resident population in the surrounding area, including children and elderly people, and can result in serious injuries and even death.

62. The impact of these methods on children was also reported to the Committee as particularly worrisome. In some areas, playgrounds and other outside areas must have protective netting installed above as protection, as Israeli forces reportedly fire tear gas canisters towards the areas without warning. The use of tear gas, sound grenades and rubber-coated bullets was documented in the immediate proximity of schools throughout 2016 and 2017. Israeli forces also reportedly entered schools, occasionally in large numbers, on repeated occasions throughout the West Bank, including East Jerusalem, searching for children accused of throwing stones. These incursions into and around schools were noted not only to be disruptive to schooling, but also to be extremely traumatic experiences for young children, aggravated by the fact that they often occurred repeatedly and on a regular basis.

63. UNRWA further highlighted the impact of excessive force on those living in refugee camps in the West Bank. An incident on 16 August 2016, in which Israeli forces were conducting a search operation in Al Fawwar refugee camp, south of Hebron, was highlighted as particularly concerning. During the raid, a 19-year-old Palestinian in the camp was shot in the chest, reportedly by an Israeli sniper located 40 metres away. While clashes did occur in the camp in the context of this raid, which reportedly involved a large number of Israeli security forces, the man who was killed was not anywhere near the clashes when he was shot. Frequent use of tear gas in and around refugee camps was further highlighted by UNRWA as a particular issue of concern, with many refugee camps being subject to these measures, as well as in some cases frequent raids by Israeli forces.

I. Accountability

[35] Ibid., p. 3.

64. Briefings to the Committee described an atmosphere of impunity for Israeli forces with respect to violations of international human rights and humanitarian law. Organizations emphasized the fact that this culture of impunity fuels the cycle of violence, and highlighted the fact that accountability is an essential element of peace. Lack of accountability, as highlighted in the Committee's previous report, has also been described as leading to a lack of faith in the Israeli judicial system.[36] According to information received by the Committee, between October 2015 and March 2017, 269 Palestinians were killed by Israeli forces, but only 24 investigations have been launched into these incidents. This is a lower number of investigations than were opened in previous years, despite the fact that the number of deaths has increased.

65. Of the investigations launched, only one case has led to an indictment — the case of Elor Azaria, an Israeli soldier who was filmed shooting and killing an injured Palestinian man as he lay on the ground in Hebron in March 2016. The case received widespread media attention, and there was significant pressure from the international community for the soldier to be held accountable. The soldier was given an 18-month sentence in February 2017, which OHCHR noted risks undermining confidence in the justice system and reinforcing the culture of impunity — particularly when contrasted with much lengthier sentences handed down to Palestinians for lesser offences.[37]

66. Lack of accountability continues to persist for alleged violations of international humanitarian law in the context of the escalation of hostilities during Operation Protective Edge in Gaza in 2014. The Al Mezan Center for Human Rights, in its briefing to the Committee, noted that, of 27 cases the organization filed, seeking to establish accountability for alleged violations of international humanitarian and human rights law, only a handful have been investigated. Further, most of these have been closed with the determination that no further investigation is needed.

67. The case of an incident in July 2014 in which a precision-guided missile struck the road outside an UNRWA school in Gaza, killing 15 people and injuring as many as 30 others, was closed in August 2016. In a statement issued after the decision to close the case, UNRWA noted that it had informed the Israeli authorities on 33 separate occasions that the school was being used as an emergency shelter for displaced people prior to the attack outside its gates. UNRWA also said that the incident raises serious questions about the conduct of military operations in relation to obligations under international humanitarian law and respect for the inviolability and sanctity of United Nations premises under international law, and emphasized its previous calls for accountability in this case and in others related to the 2014 hostilities.[38]

J. Shrinking democratic space

68. Submissions to the Special Committee highlighted once again continued concern regarding the shrinking space for Palestinian civil society to act. The Committee heard testimony regarding harassment and persecution of human rights defenders in the Occupied Palestinian Territory by the Israeli authorities, including recurrent interrogation and arrest of activists as well as tracking of activists' movements and statements, including on social media.

69. Of particular concern was legislation proposed in the Knesset in early 2017, which would allow Israeli officials to require Facebook or other platforms to censor

[36] See A/71/352, paras. 52–64.

[37] OHCHR, press briefing note on Israel: Elor Azaria case, 24 February 2017. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21221&LangID=E.

[38] See www.unrwa.org/newsroom/official-statements/record-response-idf-closing-criminal-investigation-shelling-near-unrwa.

Internet content that the Government of Israel deems to be incitement to violence.[39] Briefings to the Committee expressed concern about the impact on freedom of expression such a law could have, noting in particular that it is as yet unknown how "incitement" would be defined in the law and expressing concern that the definition could be overly broad. Further concern was expressed at the fact that the proposed law would also reportedly be applicable to the Occupied Palestinian Territory.

70. The Special Committee was also told of attempts by Israel to undermine the credibility of Palestinian human rights organizations, including recent statements by the Permanent Representative of Israel to the United Nations that linked two Palestinian civil society organizations to support for terrorism and accused them of inciting violence.[40] Individual staff members of human rights organizations also reported receiving anonymous threats, both against themselves and their organizations. The cumulative effect of this environment, the Special Committee noted, is a chilling effect on civil society and a limitation on the rights to freedom of expression, assembly and association. Limits on these important venues for lawful, peaceful protest were noted as particularly detrimental to efforts to support a vibrant civil society and work towards peace.

71. On a related issue, the Special Committee has also heard testimony regarding the targeting and harassment of Palestinian journalists, in particular women journalists, by Israeli forces, through night raids and arrests, physical assault and intimidation.[41] Evidence presented by the civil society organization, the Palestinian Center for Development and Media Freedoms described Israeli forces' attacks on journalists who were covering peaceful demonstrations in the Occupied Palestinian Territory, despite the fact that the journalists were wearing identifying vests. Video footage of these incidents was also shown to the Committee. According to the Center, these practices hinder Palestinian journalists' ability to work. The Committee further heard that, because of the risks associated with reporting on certain subjects or events, there is concern that journalists will censor themselves and the content of their work out of fear of possible retaliation from the Israeli authorities.

V. Situation of human rights in the occupied Syrian Golan

72. Civil society organizations speaking on the situation in the occupied Syrian Golan raised several concerns, one of the most pressing being the expansion of settlements. At present, there are reportedly roughly 23,000 Israeli settlers in the occupied Syrian Golan, in 34 illegal settlements. Briefings to the Committee indicated that settlers and the Israeli military control 95 per cent of the land. The remaining Syrian population, totalling approximately 25,000, lives in a limited area of five villages in the far north of the occupied Syrian Golan.

73. According to information received by the Committee, in November 2016, Israel announced the construction of 1,600 new settlement units in the occupied Syrian Golan. It was emphasized to the Committee that this would be the largest expansion of an illegal settlement in the occupied Syrian Golan since the 1980s. The Government of Israel also reportedly announced plans to expropriate 20,000 acres of land for the creation of Hermon National Park. This expropriation of land would, according to civil society submissions, surround the village of Majdal Shams, cutting off avenues for natural expansion of the village, and limiting access to agricultural land, which is a principal source of livelihood for residents.

[39] See www.haaretz.com/israel-news/1.762811.

[40] See www.omct.org/human-rights-defenders/urgent-interventions/israel/2017/07/d24425/.

[41] See www.maannews.com/Content.aspx?id=778437.

74. The Committee was also briefed regarding an announcement by the Government of Israel in July 2017 that local elections would be held on 30 October 2018 in four villages in the occupied Syrian Golan: Majdal Shams, Buq'ata, Masada and Ayn Qiniya. Prior to these elections, the mayors of these villages were appointed by the Interior Minister of Israel. Mayors and council members must be Israeli citizens. Reportedly, few residents have Israeli citizenship, with 5,500 having received this since 1981.[42] Many residents, and the Foreign Ministry of the Syrian Arab Republic, have expressed opposition to the announcement.[43]

75. Another concern is the discriminatory planning and zoning regime, which limits legal construction in Syrian towns and villages in the occupied Syrian Golan. The Committee was briefed about the demolition of a home in Majdal Shams in September 2016 by the Israeli authorities on the basis that it was built without a permit. This was noted to be the first such demolition in the occupied Syrian Golan in more than 30 years. It is nearly impossible for Syrian residents of the Golan to obtain the necessary building permits. According to information received, from 1983 until 2016 there were 1,575 cases in which Israeli courts issued orders to demolish homes in the occupied Syrian Golan. Until 2016, none of those orders had been carried out. The demolition in Majdal Shams has raised serious concerns that the Israeli authorities will begin executing demolition orders and strictly enforcing permit requirements. This would place a significant burden on Syrian communities which are already restricted to very limited geographic boundaries owing to settlements, declarations of closed military zones, national parks and other measures.

76. The Committee was briefed on several other concerns, including ongoing efforts to demine areas in the occupied Syrian Golan. The Israeli military reportedly recently evacuated a military checkpoint near the village of Majdal Shams, but did not demine the surrounding area. This is an effort that is now ongoing, with the support of civil society, and is reportedly a concern in many areas throughout the occupied Syrian Golan. Further concerns were noted regarding the imposition of the Israeli curriculum on schools in Syrian villages. Briefings to the Committee noted particular concern that the curriculum attempts to promote sectarian divisions among the local population.

VI. Recommendations

77. **The Special Committee calls upon the Government of Israel:**

(a) **To implement all prior recommendations contained in the reports of the Special Committee to the General Assembly, and to facilitate access by the Special Committee to enter the Occupied Palestinian Territory;**

(b) **To end its occupation of the West Bank, including East Jerusalem and Gaza, as well as the occupied Syrian Golan, in compliance with Security Council resolutions 242 (1967) and 497 (1981);**

(c) **To lift the illegal land and sea blockade imposed on Gaza for the past 10 years and open up opportunities for trade and increasing movement of Palestinians between Gaza and the West Bank;**

(d) **To immediately address the humanitarian crisis in Gaza, which has been made acute by the electricity shortage, and to uphold its obligations as occupying Power with respect to the protected Palestinian population;**

[42] See www.haaretz.com/israel-news/.premium-1.800061 and https://www.al-monitor.com/pulse/originals/2017/07/israeli-goal-behind-local-elections-golan-people-rejection.html.

[43] See https://www.haaretz.com/middle-east-news/syria/.premium-1.800405.

(e) To facilitate access to medical treatment for Palestinians in the Occupied Palestinian Territory, with particular attention to the urgency of the need in Gaza owing to the deteriorating conditions caused by the blockade and closure as well as the recent electricity crisis;

(f) To cease all settlement activity and construction of the separation wall in the occupied West Bank, including East Jerusalem, which contravenes international law and undermines the right of self-determination of the Palestinian people;

(g) To immediately freeze and end the illegal practice of demolitions, including administrative and punitive demolitions, which further constitute illegal collective punishment, and which contribute to the creation of a coercive environment and may lead to the forcible transfer of vulnerable communities, in violation of international humanitarian law and the rights of the Palestinian people;

(h) To ensure Palestinians have access to a non-discriminatory planning and zoning process which will advance the interests of the protected population in Area C, including Palestine refugees;

(i) To rescind all demolition, eviction and seizure orders that are likely to lead to the forcible transfer of Bedouin communities in the occupied West Bank, which affects their pastoralist lifestyle, leading to the breakdown of their traditional economies and damaging their distinct social fabric;

(j) To ensure that Palestinian residents of East Jerusalem are not subject to discriminatory requirements, that their right to family life is fully respected and protected, and to immediately end the illegal practice of punitive residency revocation for residents of East Jerusalem;

(k) To take all measures to end illegal practices of collective punishment, including punitive home demolitions, revocation of insurance benefits, residency revocation, arrest and detention and any other measures which seek to penalize the family members of attackers or alleged attackers, which are inhumane and have no deterrent effect;

(l) To ensure that detainees are treated in accordance with the provisions in international human rights and humanitarian law, in particular with respect to detention of children, and to end the practice of administrative detention;

(m) To take all necessary precautions to ensure that Israeli forces act proportionately and in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

(n) To systematically investigate all cases of rampant and excessive use of force that have led to death or serious injury, and to ensure that those responsible are held accountable;

(o) To conduct a prompt, thorough, transparent and independent investigation into all cases of alleged extrajudicial executions and ensure that those responsible are brought to justice;

(p) To release the bodies of the Palestinians that have not yet been returned to their relatives as soon as possible in order to bring dignified closure in accordance with their religious beliefs and traditions;

(q) To ensure the protection necessary for the Palestinian civilian population and human rights defenders engaged in the promotion of human rights issues affecting the Occupied Palestinian Territory and allow them to carry out their work freely and without fear of attacks and harassment;

(r) To combat the environmental degradation in the Occupied Palestinian Territory and to halt the exploitation of natural resources, as well as the lack of access for Palestinians to important natural resources, notably water resources in the West Bank as well as the Gaza strip;

(s) To cease all settlement activity in the occupied Syrian Golan, and ensure access to a non-discriminatory planning and zoning process which will advance the interests of the protected population.

78. **The Special Committee also calls upon the international community:**

(a) To use its influence to end the blockade of Gaza, which has a significant detrimental effect on Palestinians, and in particular to immediately address the acute humanitarian crisis;

(b) To address the pattern of non-cooperation by Israel with the United Nations, in particular regarding the implementation of resolutions of the General Assembly and the Security Council and mechanisms established by the Assembly and its subsidiary bodies;

(c) To give effect to its legal obligations, as contained in the 2004 advisory opinion of the International Court of Justice, on the wall;

(d) To review national policies, legislation, regulations and enforcement measures in relation to business activity to ensure that they effectively serve to prevent and address the heightened risk of human rights abuses in conflict-affected areas;

(e) To ensure that corporations respect human rights and cease to fund or enter into commercial transactions with organizations and bodies involved in settlements or the exploitation of natural resources in the occupied Palestinian and Syrian territories.

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Right to privacy*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur of the Human Rights Council on the right to privacy, Joseph A. Cannataci, submitted in accordance with Human Rights Council resolution 28/16.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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Report of the Special Rapporteur of the Human Rights Council on the right to privacy

Summary

The present report is divided into two parts: the first provides an executive summary of activities undertaken during 2016 and 2017; the second contains the interim report on the work of the TASk Force on Big Data and Open Data established by the Special Rapporteur of the Human Rights Council on the right to privacy.

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I. Overview of activities of the Special Rapporteur on the right to privacy 2016–2017

1. The 2016–2017 period has been a particularly hectic time for the mandate of the Special Rapporteur, involving engagements with civil society, Governments, law enforcement, intelligence services, data protection authorities, intelligence oversight authorities, academics, corporations and other stakeholders, involving 26 events in 15 countries and four continents. These engagements took the Special Rapporteur to over 30 different cities, some in Asia, North Africa and Central America, with 25 per cent of his engagements in the United States of America and over 50 per cent in Europe.

A. Draft international legal instrument on surveillance and privacy

2. Security and surveillance were important issues leading to the creation of the mandate of the Special Rapporteur on the right to privacy by the Human Rights Council in 2015.

3. The mandate of the Special Rapporteur on the right to privacy, set out in Human Rights Council resolution 28/16, clearly states the duty: "To identify possible obstacles to the promotion and protection of the right to privacy, to identify, exchange and promote principles and best practices at the national, regional and international levels, and to submit proposals and recommendations to the Human Rights Council in that regard, including with a view to particular challenges arising in the digital age".[1]

4. The vacuum in international law with regard to surveillance and privacy in cyberspace, the core substance of the Snowden revelations, has been identified by the Special Rapporteur as a serious obstacle to privacy, and this subject is currently his primary concern. The Special Rapporteur is of the opinion that it is not only the lack of substantive rules that are an obstacle to the promotion and protection of privacy, but also the lack of adequate mechanisms.[2]

5. Under his mandate, the Special Rapporteur would strongly recommend that the Human Rights Council support the discussion and adoption, within the United Nations, of a legal instrument to achieve two main purposes:

(a) To provide Member States with a set of principles and model provisions that could be integrated into their national legislation, embodying and enforcing the highest principles of human rights law, and especially privacy when it comes to surveillance;

(b) To provide Member States with a number of options to help plug the gaps and fill the vacuum in international law, in particular those relating to privacy and surveillance in cyberspace.

6. While the need for such a legal instrument is clear, its precise scope and form are as yet unclear. Whereas the substance of its contents is emerging clearly from ongoing research and stakeholder consultations, the best vehicle for achieving these purposes has not yet been determined.

7. It has long been recognized that one of the few areas in which the right to privacy cannot be absolute is that of the detection, prevention, investigation and

[1] A/70/53, sect. III, part A, resolution 28/16, para. 4 (c).

[2] Report of the Special Rapporteur on the right to privacy to the Human Rights Council, March 2017 (advance unedited version available online, see A/HRC/34/60).

prosecution of crime, as well as in the area of national security. Preservation of democracies, however, requires checks and balances to ensure that any surveillance is undertaken to protect a free society. Prior authorization of surveillance and the subsequent oversight of surveillance activities are key parts of the rules, safeguards and remedies needed by a democratic society in order to preserve its defining freedoms.

8. The above-mentioned report of the Special Rapporteur to the Human Rights Council in March 2017 contained interim conclusions for a legal instrument regulating surveillance in cyberspace complementary to existing cyberlaw, such as the Convention on Cybercrime (the Budapest Convention) adopted by the Committee of Ministers of the Council of Europe in 2001. A pre-existing initiative, the European Union-supported Managing Alternatives for Privacy, Property and Internet Governance (MAPPING) project, is exploring options for a legal instrument regulating surveillance in cyberspace. A draft text, which is being debated by civil society and international corporations, will be made public before the spring of 2018.

9. The process is described in more detail in supporting document V.[3]

B. Letters of allegation

10. Some of the letters of allegation sent by the Special Rapporteur to Governments related to surveillance will be published by the Office of the High Commissioner for Human Rights (OHCHR) in line with the communications reports of the special procedures mandate holders.

C. Other letters: public domain; Japan

11. On 18 May 2017, the Special Rapporteur published a letter to the Government of Japan (see supporting document III).[4] In that letter, the Special Rapporteur expressed his concern about the shortcomings of proposed legislation, which allows surveillance without the necessary safeguards, ostensibly in order to permit Japan to ratify the 2000 United Nations Convention against Transnational Organized Crime. Attempts at engagement over this matter continue and will feature in the report of the Special Rapporteur to the Human Rights Council in March 2018.

D. Other ongoing initiatives related to surveillance

12. There are other initiatives which the mandate is exploring on surveillance, security and privacy. If appropriate, details will be made public at a later stage.

E. A better understanding of privacy

13. The Special Rapporteur is analysing privacy, inter alia, as an essential right, enabling an overarching fundamental right to the free, unhindered development of one's personality. The Chair of the Task Force on Privacy and Personality, Elizabeth Coombs, former Privacy Commissioner, New South Wales, Australia, has kindly accepted to undertake this work, with a special focus on gender and privacy.

[3] See www.ohchr.org/Documents/Issues/Privacy/A-72-Slot-43103.docx.
[4] See www.ohchr.org/Documents/Issues/Privacy/A-72-Slot-43103.docx.

14. More information on the activities carried out by the Task Force is available in supporting document IV.[5]

F. TASk Force on Health Data

15. The Special Rapporteur's TASk Force on Health Data has commenced its work under the leadership of Dr. Steve Steffensen of the United States of America. Consultations are expected to take place in the spring and summer of 2018.

G. Use of personal data by corporations

16. The Special Rapporteur has continued to work on business models, privacy in the corporate use of personal data, both independently and within the MAPPING project, in the build-up to the launch of the Special Rapporteur's task force on the subject with time frames announced at the website of the Special Rapporteur (http://www.ohchr.org/EN/Issues/Privacy/SR/Pages/ThematicReports.aspx).

H. Official country visits

17. The following country visits have been undertaken or are planned: United States (19–28 June 2017),[6] France (confirmed dates, 13–17 November 2017); United Kingdom of Great Britain and Northern Ireland (confirmed dates, 11–17 December 2017); Germany (confirmed dates, 29 January to 2 February 2018); and the Republic of Korea (confirmed dates, 3–15 July 2018).

I. Resourcing

18. Only the official country visit to the United States and the travel of the Special Rapporteur and other speakers to Hong Kong, China, for the International Conference of Data Protection and Privacy Commissioners and its discussions on personality and flows of information in Asia were financed under the budget for the mandate of the Special Rapporteur managed by OHCHR. The other visits have received extramural funding, largely from the hosts of the related events.

II. TASk Force on Big Data and Open Data

19. The TASk Force on Big Data and Open Data established by the Special Rapporteur is led by David Watts.[7] The lead authors of the present report are David Watts and Vanessa Teague.[8] The members of the TASk Force, many of whom also contributed to this report, include Christian d'Cunha (European Data Protection Supervisor for the European Union), Alex Hubbard (of the office of the Information Commissioner of the United Kingdom), Professor Wolfgang Nejdl (University of

[5] See www.ohchr.org/Documents/Issues/Privacy/A-72-Slot-43103.docx.

[6] The final report on the official country visit to the United States of America is expected to be published in the spring of 2018. The end-of-mission statement is available at: http://www.ohchr.org/Documents/Issues/Privacy/SR_Privacy/VisitUSA_EndStatementJune2017.docx.

[7] David Watts is Adjunct Professor of Law at Latrobe University and at Deakin University. Until 31 August 2017 he was Commissioner for Privacy and Data Protection for the State of Victoria, Australia.

[8] Vanessa Teague is a Senior Lecturer in the Department of Computing and Information Systems at the University of Melbourne, Australia.

Hannover, Germany), Marty Abrams (Information Accountability Foundation, United States) and Marie Georges (France). Sean McLaughlan, Elizabeth Coombs and Joe Cannataci have also contributed to the report.

20. More information on the drafting process for the report on big data and open data is available in supporting document VII.[9]

A. Framing the issues

21. One of the most significant challenges that information societies face in the twenty-first century is the task of reconciling the societal benefits offered by new information and communications technologies with the protection of fundamental rights such as the right to privacy. These new technologies have the potential to assist States in ensuring respect, protection and fulfilment of their human rights obligations, but also risk undermining certain human rights, in particular the right to privacy.

22. New methods of collecting and analysing data — the phenomenon of big data — and the increasing willingness of Governments across the world to publicly release the personal information they hold, albeit in de-identified form, in order to generate economic growth and stimulate scientific research — the phenomenon of open data — challenge many of the assumptions that underpin our notions about what privacy is, what it entails and how best to protect it.

23. With the recognition of privacy by the Human Rights Council as an enabling right, essential to the right to dignity and the free and unhindered development of one's personality (see Human Rights Council resolution 34/7 of 23 March 2017), the challenge posed by big data and open data has broadened.

24. Certain claims made about big data and open data have been labelled "utopian".[10] These claims argue that big data offers the means to develop new insights into intractable public policy issues such as climate change, the threat of terrorism and public health. At the other end of the spectrum are those who take a dystopian point of view, troubled by the increasing surveillance by State and non-State actors, unjustified intrusion into the private sphere and the breakdown of privacy protections.

25. One of the major challenges encountered in the development of this report has been navigating and evaluating the claims by these and other stakeholders involved in the complex debates surrounding big data and open data. Although both issues have generated significant commentary and scholarship, gaps exist in our understanding of the technologies and their implications for the future: paradoxically, that lack of data inhibits our understanding of the potential benefits and possible harm of big data and open data.

B. Data

26. Every day our digital activities produce about 2.5 quintillion bytes of data.[11] This is 2.5 followed by 18 zeros[12] of bytes of data. To put this into perspective: an

[9] See www.ohchr.org/Documents/Issues/Privacy/A-72-Slot-43103.docx.

[10] Danah Boyd and Kate Crawford, "Critical questions for big data: Provocations for a cultural, technological, and scholarly phenomenon", *Information, Communication and Society*, vol. 15, No. 5.

[11] See www-01.ibm.com/software/data/bigdata/what-is-big-data.html.

[12] This is the calculation used in the United States. In the United Kingdom of Great Britain and Northern Ireland, a quintillion is 1 followed by 30 zeros.

average 300 page novel contains about 3 followed by five zeros bytes of data; 90 per cent of all of the data in the world was created in the last two years;[13] and the rate at which it is being created keeps growing.

27. In the present-day connected world, data is both pervasive and ubiquitous. Whenever we use a computer, a smartphone or even everyday devices that include sensors capable of recording information, data is created as a by-product. This takes the form of characters or symbols ultimately reduced by computing devices to binary code, which is then processed, stored and transmitted as electronic signals.

28. The sources of the data used for big data are as varied as the activities that take place using the Internet:

> "Data come from many disparate sources, including scientific instruments, medical devices, telescopes, microscopes, satellites; digital media including text, video, audio, email, weblogs, twitter feeds, image collections, click streams and financial transactions; dynamic sensor, social, and other types of networks; scientific simulations, models, and surveys; or computational analyses of observational data. Data can be temporal, spatial, or dynamic; structured or unstructured; information and knowledge derived from data can differ in representation, complexity, granularity, context, provenance, reliability, trustworthiness, and scope. Data can also differ in the rate at which they are generated and accessed".[14]

29. Some of the data created does not relate to individuals. It is data derived from activities such as the analysis of weather patterns, space exploration, scientific testing of materials or designs or the risks associated with securities trading in financial markets. But a large proportion is the data we create ourselves or that is created about us. The focus of this report is on this category of data — personal information — whether provided, observed, derived or inferred.[15]

30. Personal information captures our individuality as human beings. It is this ability to identify each individual which makes personal information so valuable.

31. The data we create ourselves involves our own agency. It includes our emails and text messages, as well as images and videos we create and share. Other data is created about us by third parties, but in circumstances where we have participated, at least to some extent, in its creation, for example electronic health records or e-commerce transactions.

32. But other data about us is generated in ways that are not obvious because it takes place behind the scenes, in circumstances that are opaque and largely unknown — and unknowable — to us. It consists of "digital bread crumbs",[16] electronic artefacts and other electronic trails left behind as a product of our online and offline activities. This data can encompass the times and locations when our mobile devices connect with mobile telephone towers or global positioning system (GPS) satellites, records of the websites we visit, or images collected by digital closed circuit television (CCTV) systems. These "digital breadcrumbs we leave behind and which are likely to remain in perpetuity on computer servers are clues to

[13] See www-01.ibm.com/software/data/bigdata/what-is-big-data.html.

[14] United States, National Science Foundation, "Critical techniques and technologies for advancing big data science and engineering (BIGDATA)", Program Solicitation NSF 14-543, available from www.nsf.gov/pubs/2014/nsf14543/nsf14543.pdf at p3.

[15] Martin Abrams, "The origins of personal data and its implications for governance", available from http://informationaccountability.org/wp-content/uploads/Data-Origins-Abrams.pdf.

[16] Evan Schwartz, "Finding our way with digital bread crumbs", *MIT Technology Review*, 18 August 2010. Available from www.technologyreview.com/s/420277/finding-our-way-with-digital-bread-crumbs/.

who we are, what we do, and what we want. This makes personal data — data about individuals — immensely valuable, both for public good and for private companies".[17]

33. A world that is engulfed in data, computer processing and instant digital communication raises questions about how privacy rights can coexist with the new technologies that enable personal information to be collected, processed and analysed in ways that could not have been conceived when the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights were drafted.

34. As a result of pervasive computer mediation, nearly every aspect of the world is rendered in a new symbolic dimension as events, objects, processes and people become visible, knowable and shareable in a new way. The world is reborn as data and the electronic text is universal in scale and scope.[18]

35. The way in which information and communications technologies permit individuals to become knowable through the analysis of their data involves looking "at the nature of a person as being constituted by that person's information".[19] The phenomenon that enables this is widely known as big data.

C. Big data

36. The term "big data" is commonly used to describe the large and increasing volume of data and the advanced analytic techniques used to search, correlate, analyse and draw conclusions from it.

37. There is no agreed definition of big data. The United States National Institute of Standards and Technology describes it as the inability of traditional data architectures to efficiently handle the new datasets. The characteristics of big data that force new architectures are:

(a) Volume (i.e., the size of the dataset);

(b) Variety (i.e., data from multiple repositories, domains or types);

(c) Velocity (i.e., rate of flow);

(d) Variability (i.e., the change in other characteristics).

38. These characteristics — volume, variety, velocity and variability — are known colloquially as the "Vs" of big data.[20]

39. The above description provided by the National Institute, as well as many other efforts to pinpoint the phenomenon of big data, such as the European Union's statement that "big data refers to large amounts of data produced very quickly by a high number of diverse sources",[21] direct attention to the technologies that are coalescing to make the collection, processing and analysis of large quantities of data a commonplace reality. However, the high level of generalization in these

[17] Julie Lane and others, eds., *Privacy, Big Data, and the Public Good: Frameworks for Engagement* (New York, Cambridge University Press, 2014).

[18] Shoshana Zuboff, "Big other: surveillance capitalism and the prospects of an information civilization", *Journal of Information Technology*, vol. 30, No. 1 (March 2015).

[19] Luciano Floridi, "Four challenges for a theory of informational privacy", *Ethics and Information Technology*, vol. 8, No. 3 (July 2006).

[20] Other Vs are attributed, but these four are the key drivers. See http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1500-1.pdf.

[21] See https://ec.europa.eu/digital-single-market/en/policies/big-data.

descriptions and their predominant focus on technologies do not sufficiently account for the phenomenon of big data.

40. A more exhaustive description of big data that extends further than the four "Vs" has been attempted by a variety of experts. A useful and more detailed account describes big data as:

(a) Huge in volume, consisting of terabytes or petabytes of data;

(b) High in velocity, being created in or near real-time;

(c) Diverse in variety, being structured and unstructured in nature;

(d) Exhaustive in scope, striving to capture entire populations or systems;

(e) Fine-grained in resolution and uniquely indexical in identification;

(f) Relational in nature, with common fields enabling the conjoining of different datasets;

(g) Flexible, adding new fields easily and able to expand in size rapidly.[22]

41. One particular instance of big data does not necessarily embody each and every one of these features.

42. Other approaches present big data as more than a technological phenomenon:

> "We define Big Data as a cultural, technological, and scholarly phenomenon that rest on the interplay of:
>
> "(a) Technology — maximizing computation power and algorithmic accuracy to gather, analyse, link, and compare large data sets;
>
> "(b) Analysis — drawing on large data sets to identify patterns in order to make economic, social, technical, and legal claims;
>
> "(c) Mythological — the widespread belief that large data sets offer a higher form of intelligence and knowledge that can generate insights that were previously impossible, with the aura of truth, objectivity, and accuracy."[23]

43. A main claim made by proponents of big data is that it can provide a solution to the limits imposed on research from a lack of empirical evidence, i.e., a lack of data, and can provide us with the objective truth about circumstances or phenomena. These epistemological claims, which tend to elevate big data to a new form of scientific method, lie at the centre of the unease many have expressed about the limitations of, and risks posed by, big data.

44. There is broad agreement that big data can produce social benefits, including personalized services, increased access to services, better health outcomes, technological advancements and accessibility improvements.[24] The European

[22] Rob Kitchin, "Big data, new epistemologies and paradigm shifts", *Big Data and Society*, vol. 1, No. 1 (April–June 2014).

[23] Boyd and Crawford, "Critical questions for big data".

[24] There are also significantly contrary views. For example, see the statement of the European Union, Article 29 Data Protection Working Party on the impact of the development of big data on the protection of individuals with regard to the processing of their personal data in the European Union, 16 September 2014: "Many individual and collective benefits are expected from the development of big data, despite the fact that the real value of big data still remains to be proven. The Working Party would naturally support genuine efforts at European Union or national levels which aim to make these benefits real for individuals in the European Union, whether individually or collectively". See http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2014/wp221_en.pdf.

Commission states that "the need to make sense of 'big data' is leading to innovations in technology, development of new tools and new skills".[25]

45. The European Commission identifies information as being an economic asset, as important to society as labour and capital.[26] Significantly, this market is dominated by a small number of massive technology firms whose market share relies upon the use of data.

D. Advanced analytics

46. The critical change is the tremendous use of data to inform the algorithm whose subsequent behaviour depends on the very data it accesses:

> "The term machine learning refers to automated detection of meaningful patterns in data. In the couple of decades, it has become a common tool in almost any task that requires information extraction from large data sets ...
>
> "One common feature of all of these applications is that, in contrast to more traditional uses of computers, in these cases, due to the complexity of the patterns that need to be detected, a human programmer cannot provide an explicit, fine-detailed specification of how such tasks should be executed ... Machine learning tools are concerned with endowing programs with the ability to learn and adapt."[27]

47. The key difference between "now" and "then" is the autonomous and semiautonomous nature of the new techniques.

48. One of the most commonly used analytic techniques is known as "data mining". This is a process whereby data is extracted from large data sets and subsequently analysed to determine whether patterns or correlations exist. Data mining facilitates the simplification and summarization of vast quantities of raw data[28] and the inference of knowledge from the patterns that appear.

49. The engine that drives these techniques and tools is the algorithm.

E. Algorithms

50. Algorithms are nothing new. They "have been around since the beginning of time and existed well before a special word had been coined to describe them".[29]

51. Algorithms are not confined to mathematics. The Babylonians used them for deciding points of law, Latin teachers use them to ensure that grammar is correct and they have been used in all cultures for predicting the future, for deciding medical treatment and or for preparing food. Today, everybody uses algorithms of one sort or another, often unconsciously, when following a recipe, using a knitting pattern or operating household gadgets.[30]

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[25] See https://ec.europa.eu/digital-single-market/en/making-big-data-work-europe.

[26] Ibid.

[27] Shai Shalev-Shwartz and Shai Ben-David, *Understanding Machine Learning* (New York, Cambridge University Press, 2014).

[28] Data that relates only to one individual.

[29] Jean-Luc Chabert, ed., *A History of Algorithms: From the Pebble to the Microchip* (Berlin, Springer-Verlag, Berlin, Heidelberg, 1999).

[30] Ibid.

52. In common with other elements of big data, "it is notoriously difficult to give a precise characterization of what an algorithm is".[31] For the purposes of this report, a useful working definition is:

> "a specific set of instructions for carrying out a procedure or solving a problem, usually with the requirement that the procedure terminate at some point. Specific algorithms sometimes also go by the name method, procedure, or technique ... The process of applying an algorithm to an input to obtain an output is called a computation."[32]

53. What separates an algorithm used to bake a cake from an algorithm that assesses a person's creditworthiness is the degree of automation involved, its autonomous, non-linear, nature and the amount of data processed.

54. More and more how we understand ourselves and our relationship to the world takes place through the lens of an algorithm. Algorithms are now a crucial part of information societies, increasingly governing "operations, decisions and choices previously left to humans",[33] recommending matches on dating sites,[34] determining the best route to travel[35] and assessing whether people are good credit risks.[36] They are used for profiling — identifying personal characteristics and behaviour patterns to make personalized predictions, such as the goods or services we might be inclined to buy. They determine how data should be interpreted and what resulting actions should be taken. They "mediate social processes, business transactions, governmental decisions and how we perceive, understand and interact among ourselves and our environment".[37]

55. From an individual perspective, the recommendations and decisions that result from algorithmic processing appear to spring from an inscrutable and unknowable black box, a kind of twenty-first century Delphic oracle, which seemingly makes unchallengeable and authoritative pronouncements divorced from human agency. Unravelling the mechanisms of algorithmic processing, and thus assessing the risks that they pose, is complex and there is a multiplicity of issues that need to be considered. These complexities hinder our ability to understand how algorithms function and how they affect our lives.

56. There is a growing body of literature highlighting the problems algorithms can cause and urging caution before we run headlong into an algorithmic future without thinking about the safeguards we need to manage the risks.

1. Algorithms are value-laden

57. Contrary to their arithmetical construction, which gives them an appearance of objectivity, algorithms "are inescapably value-laden".[38] The values they embody

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[31] Felicitas Kraemer, Kees van Overveld and Martin Peterson, "Is there an ethics of algorithms?", *Ethics and Information Technology*, vol. 13, No. 3 (September 2011).

[32] See http://mathworld.wolfram.com/Algorithm.html.

[33] Brent Mittelstadt and others, "The ethics of algorithms: mapping the debate", *Big Data and Society*, vol. 3, No. 2 (July-December 2016).

[34] See, for example, Rebecca Harrington, "Dating services tinker with the algorithms of love", *Scientific American*, 13 February 2015. Available from www.scientificamerican.com/article/dating-services-tinker-with-the-algorithms-of-love/.

[35] See, https://motherboard.vice.com/en_us/article/4x3pp9/the-simple-elegant-algorithm-that-makes-google-maps-possible.

[36] See Michael Byrne, "The simple, elegant algorithm that makes Google Maps possible", 22 March 2015. Available from http://mitsloan.mit.edu/media/Lo_ConsumerCreditRiskModels.pdf.

[37] Mittelstadt and others, "The ethics of algorithms".

[38] Ibid.

often reflect cultural or other assumptions of the software engineers who design them and embed them within the logical structure of algorithms as unstated opinions.

58. For example, a credit-scoring algorithm might be designed to inquire about a person's place of birth, where she or he went to school, where she or he resides and her or his employment status. The selection of these proxies involves a value judgment, which is that the answers to those questions are relevant to assessing whether credit should be offered and, if so, on what terms. Either way, the applicant for credit very often has no way of knowing the reason for any particular credit decision and cannot determine the value judgements that have been applied.

59. Although these data proxies might be relevant to credit assessments in some societies, they will be, at best, unhelpful distractions, or at worst damaging in others. For example, their deployment in some developing countries where much of the population might have no fixed address, may have had little formal education and may be self-employed would deny, in perpetuity, access to credit.

60. On the other hand, algorithms that analyse non-traditional forms of dat: could show that a person without a conventional credit history nevertheless could be a good risk — thus enabling human development.[39]

2. The problem of imperfect data

61. The raw material that fuels algorithms is data, but not all data is accurate, sufficiently comprehensive, up-to-date or reliable.[40] The provenance of some data, for example taxation records, can usually readily be established, but their accuracy may vary from taxation agency to taxation agency within one State and between States. Other data sources may have been drawn from antiquated databases never properly cleansed or from insecure sources or where there have been inappropriate data entry and recordkeeping standards.

62. The role of algorithms is to process data, and they "are therefore subject to a limitation shared by all types of data-processing, namely that the output can never exceed the input".[41] The "garbage in/garbage out" principle applies.

3. The choice of data

63. This risk regarding choice of data is similar to that noted in paragraph 62 above. Just as poor data produces poor outcomes, the selection of inappropriate or irrelevant data also produces outcomes that can be unreliable and/or misleading.

64. A significant amount of algorithmic processing involves inductive reasoning and identifying correlations between apparently disparate pieces of data. If the wrong data is used, any recommendations or decisions will be flawed.

4. Bias, discrimination and embedding disadvantage

65. Although some experts draw distinctions between bias and discrimination,[42] the risks they pose in the context of big data are sufficiently similar to warrant them being discussed together.

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[39] United States, Federal Trade Commission, "Big data: a tool for inclusion or exclusion — understanding the issues" (2016). Available from www.ftc.gov/system/files/documents/reports/big-data-tool-inclusion-or-exclusion-understanding-issues/160106big-data-rpt.pdf.

[40] For example, the interests of minority groups not well represented in a particular dataset may be affected by decisions and predictions subsequently taken on the basis of such information.

[41] Mittelstadt and others, "The ethics of algorithms".

66. Algorithms can be used for profiling, i.e., to identify correlations and make predictions about behaviour at a group-level, albeit with groups (or profiles) that are constantly changing and redefined by the algorithm using machine learning:

> "Whether dynamic or static, the individual is comprehended based on connections with others identified by the algorithm, rather than actual behaviour. Individuals' choices are structured according to information about the group. Profiling can inadvertently create an evidence-base that leads to discrimination."[43]

67. Some commentators have argued that advanced analytic techniques, such as profiling, intensify disadvantage. An example is predictive policing, which draws on the use of crime statistics and algorithmically based analysis to predict crime hotspots and make them the priorities for law-enforcement agencies.[44] As hotspots are more heavily policed, and are often located in socially disadvantaged areas rather than where white-collar crime occurs, more policing tends to localize arrests and convictions, which leads, in a vicious cycle, to the repeated and intensified identification of the same hotspot locations, thus exposing people who are disadvantaged to a higher risk of arrest and punishment under criminal law.

68. The possible use of such tools by Governments to control, target or otherwise harm certain communities has also raised concerns.[45]

5. Responsibility and accountability

69. Harm caused by algorithmic processing is broadly attributable to the difficulties associated with processing large volumes of disparate datasets and the design and implementation of the algorithms used for processing. As there are so many variables involved, it is difficult to pinpoint who is responsible for the harm caused. Oftentimes, big data analytics is based on discovery and exploration, as opposed to the testing of a particular hypothesis, so it is difficult to predict (and, for individuals, to articulate) what the ultimate purpose of the use of data will be at the outset.

70. Algorithm opaqueness is not necessarily "a given"; it is technically possible to retain the data used and the result of the application of the algorithm at each stage of its processing.

6. Challenges to privacy

71. The Organization for Economic Cooperation and Development (OECD) published its "Guidelines on the Protection of Privacy and Transborder Flows of Personal Data" in 1980.[46] The eight principles in the OECD Guidelines, together with the similar principles found in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Data Protection Convention), adopted by the Council of Europe in 1981, and in the Guidelines for the regulation of computerized personal data files adopted by the General Assembly in its

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[42] Bias is considered to be the consistent or repeated expression of a particular decision-making preference, value or belief. Discrimination is the adverse, disproportionate impact that can result from algorithmic decision-making.

[43] Mittelstadt and others, "The ethics of algorithms".

[44] See, for example, www.predpol.com/how-predictive-policing-works/.

[45] Lee Rainie and Janna Anderson, "Code-dependent: pros and cons of the algorithm age", Pew Research Center, 8 February 2017. Available from www.pewinternet.org/2017/02/08/code-dependent-pros-and-cons-of-the-algorithm-age/.

[46] Organization for Economic Cooperation and Development (OECD), "OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data". Available from www.oecd.org/sti/ieconomy/oecdguidelinesontheprotectionofprivacyandtransborderflowsofpersonaldata.htm.

resolution 45/95 of 14 December 1990 have informed information privacy laws across the world.

72. The foundational principle found in both OECD Guidelines and the Data Protection Convention, the "collection limitation principle", is that personal information should only be collected lawfully and fairly and, where appropriate, with the knowledge and consent of the individual concerned.[47] The "purpose specification principle" requires that the purpose of the collection of personal information should be specified at the time of collection and that the subsequent use of the information should be limited to the purpose of collection or a compatible purpose and that these should be specified whenever there is a change of purpose.[48] The "use limitation principle" restricts the disclosure of personal information for incompatible purposes except with the individual's consent or by legal authority.[49] The "data quality principle" is challenged by the collection of vast quantities of data and the requirement to only process personal information that is adequate, relevant and not excessive. The 1990 United Nations Guidelines for the regulation of computerized personal data files posit the principle of proportionality in data retention for the purpose of data processing.

73. Big data challenges these principles while posing ethical issues and social dilemmas arising from the poorly considered use of algorithms. Rather than solving public policy problems, there is a risk of unintended consequences that undermine human rights, such as freedom from all forms of discrimination, including against women, persons with disabilities and others.

74. At the same time, there are signs of a change of mindset in algorithm design leading to better algorithmic solutions for big data algorithms with, for example, the initiative of Institute of Electrical and Electronics Engineers Standards Association on ethically aligned design.[50]

75. In terms of privacy, relevant international instruments extend the meaning of the right to privacy beyond the information privacy rights that are the focus of the principles of the OECD Guidelines and the Data Protection Convention. Given the recognition of privacy as an enabling right, which is important to the enjoyment of other human rights, and as a right strongly linked to concepts of human dignity and the free and unhindered development of one's personality (see Human Rights Council resolution 34/7), the challenges posed by big data to privacy broaden towards the inclusion of a diversity of human rights. The tendency of big data to intrude into the lives of people by making their informational selves known in granular detail to those who collect and analyse their data trails is fundamentally at odds with the right to privacy and the principles endorsed to protect that right.

76. The regulatory implications are as profound as the changes evident in evolving industry and government practices.

F. Open data

77. Open data is a concept that has gained popularity in parallel to the development of advanced analytics. It seeks to encourage the private and public

[47] See OECD Privacy Principles. Available from http://oecdprivacy.org/.

[48] Ibid.

[49] Ibid.

[50] Institute of Electrical and Electronics Engineers (IEEE), IEEE Global Initiative for Ethical Considerations in Artificial Intelligence and Autonomous Systems, *Ethically Aligned Design: A Vision for Prioritizing Wellbeing with Artificial Intelligence and Autonomous Systems*, ver. 1 (IEEE Press, 2016). Available from http://standards.ieee.org/develop/indconn/ec/ead_v1.pdf.

sectors to release data into the public domain to encourage transparency and openness, particularly in government.

78. Open data is defined as:

> "... data that can be freely used, reused and redistributed by anyone — subject only, at most, to the requirement to attribute and share alike".[51]

79. Open data can consist of practically any category of data. The Open Knowledge Foundation summarizes these as follows:

(a) Culture: data about cultural works and artefacts — for example titles and authors — generally collected and held by galleries, libraries, archives and museums;

(b) Science: data that is produced as part of scientific research from astronomy to zoology;

(c) Finance: data such as government accounts (expenditure and revenue) and information on financial markets (stocks, shares, bonds, etc.);

(d) Statistics: data produced by statistical offices such as the census and key socioeconomic indicators;

(e) Weather: the many types of information used to understand and predict the weather and climate;

(f) Environment: information related to the natural environment such as presence and level of pollutants, the quality, and rivers and seas.[52]

80. In order to satisfy the requirements of the definition, open data is often released under Creative Commons' licenses. Creative Commons license CC BY 4.0 permits the unrestricted copying, redistribution and adaptation (including for commercial purposes) of the licensed material, provided that attribution requirements are met.[53]

81. Government-held data about its citizens would not fall under any of these categories. Open data and open government were intended to provide access to data about government itself and the world we live in. It was not intended to include data that governments collect on citizens. In recognition of this, some jurisdictions explicitly exclude "personal" and other categories of information, such as commercial or "cabinet-in-confidence" information, from open data.[54] We should not lose sight of the fact that, amidst terminology such as "sharing" and "connecting", a reversal has occurred, that is, rather than releasing data about how government works and which the public can use to hold government to account, governments are releasing data about their citizens.

[51] See http://opendatahandbook.org/guide/en/what-is-open-data/.

[52] See https://okfn.org/opendata/.

[53] See https://creativecommons.org/licenses/by/4.0/.

[54] Australia, New South Wales government, "Open data policy", Department of Finance and Services, 2013.

G. Open government

82. One of the first acts of the Obama administration was to issue an executive order to encourage the release of Government-held information to enable public trust and to promote transparency, participation and collaboration.[55]

83. Following this, the Open Government Partnership was formed. In September 2011 the Partnership issued the Open Government Declaration.[56] The Declaration focuses on providing individuals with more information about the activities of government and emphasizes the need for greater civic participation and government transparency, fighting corruption, empowering citizens and harnessing "the power of new technologies to make government more effective and accountable."

84. The Open Government Declaration commits its members, on a non-binding and voluntary basis, to:

(a) Increase the availability of information about governmental activities;

(b) Support civic participation;

(c) Implement the highest standards of professional integrity throughout the administration;

(d) Increase access to new technologies for openness and accountability.[57]

85. This first executive order of the Obama administration was followed by another executive order, issued on 9 May 2013, which sought to make all United States Government information open and machine-readable by default.[58] The emphasis had changed from the earlier, 2009, order. Open government data, it stated: "promotes the delivery of efficient and effective services to the public, and contributes to economic growth. As one vital benefit of open government, making information resources easy to find, accessible, and usable can fuel entrepreneurship, innovation, and scientific discovery that improves Americans' lives and contributes significantly to job creation".[59]

86. In the following years, open data has evolved to a point where, in 2017, its ambitions lie beyond the release into the public domain of data that has never been or is not derived from personal information to the release of de-identified personal information. Proponents of this approach assert that much "value" is locked away in government databases or other information repositories and that making this information available publicly will encourage research and stimulate the growth of the information economy.

87. Open data that is derived from personal information thus wholly relies on the efficacy of "de-identification" processes in order to prevent re-identification and thus its linkage back to the individual from whom it was derived. Debates about whether or not de-identification delivers both privacy protection and "research-useful" data have proven to be highly contentious.

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[55] President Obama, "Transparency and Open Government", 21 January 2009, memorandum for the Heads of Executive Departments and Agencies. Available from https://obamawhitehouse.archives.gov/the-press-office/transparency-and-open-government.

[56] See https://www.opengovpartnership.org/open-government-declaration.

[57] https://www.opengovpartnership.org/open-government-declaration.

[58] President Obama, executive order of 9 May 2013, on "Making open and machine readable the new default for Government information". Available from https://obamawhitehouse.archives.gov/the-press-office/2013/05/09/executive-order-making-open-and-machine-readable-new-default-government.

[59] Ibid.

H. Complexity of big data

88. In 2015, Australian journalist Will Ockenden published his telecommunications metadata online and asked people to tell him what they could infer about his life. The metadata included the exact times of all telephone calls and SMS messages, along with the nearest phone tower. Although he replaced phone numbers with pseudonyms, questions like "where does my mother live?" were easily and correctly answered based on communication and location patterns alone. It wasn't complicated — viewers simply guessed (correctly) that his mother lived in the place he visited on Christmas Day.

89. This is a key theme of privacy research: that patterns in the data, without the names, phone numbers or other obvious identifiers, can be used to identify a person and hence to extract more information about them from the data. This is particularly powerful when those patterns can be used to link many different datasets together to build up a complex portrait of a person.

90. Some data inevitably must be exposed. Phone companies know what numbers each customer is dialing, and doctors know their patients' test results. Controversies therefore arise on the disclosure of that data to others, such as corporations or researchers, and on the ways governments can use information and impact the exercise of the human rights of their citizens.

91. Other data is deliberately harvested, often without the individual's knowledge or consent. Researchers at the Electronic Frontier Foundation published the results of "Panopticlick", an experiment that showed it was possible to fingerprint a person's web browser based on simple characteristics such as plugins and fonts.[60] They warned that web browsing privacy was at risk unless limits were set on the storage of these fingerprints and their links with browsing history. No significant policy changes were made. Today, in 2017, web browsing privacy is gone. Many companies routinely and deliberately track people, generally for commercial reasons. Web tracking is now almost ubiquitous and evaded only with great effort.

92. Much of the economy of the modern Internet depends on harvesting complex data about potential customers in order to sell them things, a practice known as "surveillance capitalism".[61] However, surveillance does not seem any more justifiable to data-driven efficiency than child-labour is to an industrial economy. It is only the most convenient and easiest way to exploit information. It is not remotely to be considered as a fundamental right, as is the right to privacy. Indeed, the data-driven economy would survive and prosper if minimal standards and improved technologies forced corporations and governments into a world in which ordinary people had much greater control over their own data.[62]

93. Governments would also be able to innovate with a more legitimate license. The community's level of trust in government strongly shapes how they view the possible impact of open data and open government initiatives. Those who trust

[60] Peter Eckersley, "How unique is your web browser?" in *Privacy Enhancing Technologies*, Mikhail Atallah and Nicholas Hopper, eds. (Berlin, Springer-Verlag, 2010).

[61] Shoshana Zuboff, "Big other: surveillance capitalism and the prospects of an information civilization", *Journal of Information Technology*, vol. 30, No. 1 (March 2015).

[62] Corporations and Governments do not necessarily need to be forced to provide privacy protections. For examples of ethical approaches adopted by companies see Information Commissioner's Office, "Big data, artificial intelligence, machine learning and data protection", ver. 2.2 (2017). Available from https://ico.org.uk/media/for-organisations/documents/2013559/big-data-ai-ml-and-data-protection.pdf.

government are far more likely to think that there are benefits to open data.[63] Research shows that people are for the most part comfortable with their government providing online data about their communities, although they sound cautionary notes when the data hits close to home. Citizen comfort levels vary depending on what area of data collection is being discussed.[64]

94. Most information privacy laws regulate the collection and processing of personal information: if information is not personal information it is not regulated by information privacy laws. Many such laws recognize that personal information may be de-identified so that it can be used or processed for purposes such as public interest research in a way that does not interfere with individuals' information privacy rights. Governments and others have sought to maintain the trust of those whose data they collect by assurances of de-identification.

95. This leads to the important consideration "do de-identification processes deliver data that does not interfere with individuals' information privacy rights"?

96. Simple kinds of data, such as aggregate statistics, are amenable to genuinely privacy-preserving treatment such as differential privacy. Differential privacy algorithms work best at large scales, and are being incorporated into commercial data analysis. Randomized algorithms achieving differential privacy are a valuable tool in the privacy arsenal, but they do not provide a way of blanket de-identification of highly complex datasets of unit-record[65] level data about individuals. The use of these techniques by the Apple corporation in 2016 is an example of how differential privacy is used on a large scale.[66]

97. High-dimensional unit-record level data cannot be securely de-identified without substantially reducing its utility. This is the sort of data produced by a longitudinal trace of one person's data for health, mobility, web searching and so on. Supporting document I[67] provides a summarized account of de-identification tools and controversies.

Open government data

98. There are numerous examples of successful re-identification of individuals in data published by governments.[68] This "public re-identification" is public in two senses: the results are made public; and re-identification uses only public auxiliary information.

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[63] John Horrigan and Lee Rainie, "Americans' views on open Government data", Pew Research Center, 21 April 2015.

[64] Ibid.

[65] Relates only to one individual.

[66] Andy Greenberg, "Apple's 'differential privacy' is about collecting your data — but not your data", 13 June 2016. Available from https://www.wired.com/2016/06/apples-differential-privacy-collecting-data/https://techcrunch.com/2016/06/14/differential-privacy/ https://arxiv.org/abs/1709.02753.

[67] See www.ohchr.org/Documents/Issues/Privacy/A-72-Slot-43103.docx.

[68] In testimony to the Privacy and Integrity Advisory Committee of the Department of Homeland Security on 15 June 2005, Sweeney stated it was in 1997 that she "was able to show how the medical record of William Weld, the Governor of Massachusetts at the time could be re-identified using only his date of birth, gender and ZIP. In fact, 87 per cent of the population of the United States is uniquely identified by date of birth (e.g., month, day and year), gender, and their 5-digit ZIP codes. The point is that data that may look anonymous is not necessarily anonymous". See www.dhs.gov/xlibrary/assets/privacy/privacy_advcom_06-2005_testimony_sweeney.pdf; see also Latanya Sweeney, "Matching known patients to health records in Washington state data", Harvard University, 2012. Available from http://dataprivacylab.org/projects/wa/1089-1.pdf and http://dataprivacylab.org/index.html; Latanya Sweeney, "Achieving k-anonymity privacy protection using generalization and suppression", *International Journal of Uncertainty, Fuzziness and Knowledge-Based Systems*, vol. 10, No. 5 (2002).

99. The more auxiliary information is available, the easier it becomes to re-identify a larger number of individuals. As more datasets are linked, there is a reduction in the auxiliary information necessary for re-identification. The public disclosure and linking of datasets gathers vast auxiliary information about individuals in the same place, making it much easier to re-identify any data related to them.

100. The re-identifiability of open data is a small indication of a much larger problem — the re-identifiability of "de-identified" commercial datasets that are routinely sold, shared and traded.

101. Arrayed against the right to privacy in the big data and open data era are powerful forces. The weakest possible de-identification permitted is likely to be the most financially preferred by all who deal in data, whether for commercial or other purposes, and governments come under pressure not just in relation to opening up access to data about individuals, but also in relation to the regulation of this access.

102. Non-government organizations have voiced concerns about the growth of big data without due consideration for the involvement of the individual, the ethical and legal issues arising from inadequate management of the personal information of individuals or adequate regulation.[69] Such organizations will continue to advocate for adequate protection and appropriate action.

I. Considering the present: big commercial data and privacy

103. The exponential increase in data collection and the rush to connect seemingly every object to the Internet, with insufficient regard for data security, has created risks for individuals and groups. In efforts to assure consumers and individuals of the security of information identifying them, a number of notions have been spread in the public domain. For example, the notion of highly complex "anonymized" data is cultivated by an industry that benefits from users' mistaken feeling of anonymity.[70]

104. A great deal of data is gathered from ordinary users without their knowledge or consent. This data can be sold and linked with data from other sources to produce a complex record of many aspects of a person's life. This information serves many purposes, including political control, as has been demonstrated by a dataset unintentionally exposed by a political organization in the United States.[71] The dataset included personal details of almost 200 million United States voters, along with astonishing detail gathered (or guessed) about their political beliefs. In China, there is a "social credit" project that aims to rate not only the financial creditworthiness of citizens, but also to track their social and possibly political behaviour. It relies upon data from a variety of sources, primarily online sources, over time.[72]

105. Data brokers —companies that collect consumers' personal information and resell or share that information with others—are important participants in the big

[69] See www.privacyinternational.org/node/8.

[70] Even if anonymized, this does not remove the relevance of privacy principles and considerations such as "consent".

[71] Sam Biddle, "Republican data-mining firm exposed personal information for virtually every American voter", *The Intercept*, 19 June 2017. Available from https://theintercept.com/2017/06/19/republican-data-mining-firm-exposed-personal-information-for-virtually-every-american-voter/.

[72] "China invents the digital totalitarian state", *The Economist*, 17 December 2016. Available from https://www.economist.com/news/briefing/21711902-worrying-implications-its-social-credit-project-china-invents-digital-totalitarian. Lucy Hornby, "China changes tack on 'social credit' scheme plan", *Financial Times*, 4 July 2017. Available from www.ft.com/content/f772a9ce-60c4-11e7-91a7-502f7ee26895.

data economy. In developing their products, data brokers acquire a vast array of detailed and specific information about consumers from a variety of sources;[73] analyse it to make inferences about consumers, some of which may be sensitive; and share the information with clients in a range of industries. All of this activity takes place without the consumers' knowledge.[74]

106. While data broker products help to prevent fraud, improve product offerings and deliver personalized services, many purposes for which data brokers collect and use data pose risks to consumers. Concerns exist about the lack of transparency, the collection of data about young people, the indefinite retention of data and the use of such data for the determination of eligibility or for unlawful discriminatory purposes.[75]

107. The European Parliament's recent draft report on European Privacy regulation recommends that "end-users should be offered a set of privacy setting options, ranging from higher (for example, 'never accept cookies') to lower (for example, 'always accept cookies') and intermediate...".[76]

108. The need to increase the control of individuals over their Internet privacy is being widely discussed. Individuals use their own devices and their data to obtain the information they require, such as maps and directions, and to view the advertisements they are interested in. In this regard, it is vital to ask, while technologies facilitating end-user control are important, to what extent can individuals exert sufficiently comprehensive protective control? The adoption of these tools conflicts with the economic forces currently shaping the Internet.[77] Do governments have a role in the development and adoption of these tools?

Technologies for controlling data collection

109. Controlling (including stopping) data collection is relevant to the data people do not want to share. With "old" technology this was not a consideration, as the user was inevitably in control because technology did not enable anything other than user determination: devices had physical covers on cameras or ethernet-only Internet connections that could be manually unplugged. Now there are internal Wi-Fi and coverless cameras. Television sets have microphones that cannot be turned off. Manual disabling features have disappeared, although there are

[73] There are many reported illustrations of large-scale commercial data acquisition from smart devices such as televisions, "intimate appliances", children's toys and, ride sharing apps to "connected cars".

[74] United States Senate Committee on Commerce, Science and Transportation, "A review of the data broker industry: collection, use, and sale of consumer data for marketing purposes", staff report, 18 December 2013. Available from http://educationnewyork.com/files/rockefeller_databroker.pdf.

[75] United States Federal Trade Commission, "Data brokers: a call for transparency and accountability", May 2014. Available from www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf.

[76] Marju Lauristin, "Draft report on the proposal for a regulation of the European Parliament and of the European Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC", European Parliament, Committee on Civil Liberties, Justice and Home Affairs, 2017.

[77] For example, AdNauseum defeats tracking by automatically clicking on all the advertisements presented to a user in order to obscure which ones the user truly reads. This has been blocked by Google Chrome. Other sites detect and block individuals who visit with ad blockers installed. See Daniel Howe and Helen Nissenbaum, "Engineering privacy and protest: a case study of AdNauseam". Available from https://adnauseam.io/.

technologies for obstructing the collection of data.[78] The highly successful "TLS [Transport Layer Security] Everywhere" campaign means that most Internet traffic is now encrypted and much less likely to be collected in transit by an entity unknown to the user. Such technologies have benefits that need to be further explored and supported.

110. The idea of obfuscating who you are and what you do is also not new — consider the battle between some social networks' "real names" policies and the efforts of those who defend their right to register under pseudonyms. To obfuscate requires tools that allow users to present a "reserved" profile and separate it from other profiles they choose to present.

111. Research shows consistently that if individuals are concerned about the personal information practices of organizations they deal with, they are more likely to provide inaccurate or incomplete information.[79] Because privacy and data protection generate trust, they have a beneficial effect on data quality and also on data analytics. The confidence of users in their privacy is also important for the stability and accuracy of the machine-learning algorithms. Ordinary machine learning can be highly susceptible to deliberately contrived confusing inputs.[80] What would happen if a large number of people deliberately adopted tools for obfuscating themselves due to privacy concerns?

112. A simplistic approach to big data — open data that is blind to the complex interaction between perceived privacy management business practices, trust in the respect for privacy and the behaviours of individuals will not facilitate "big data", but will rather lead to potentially inaccurate and poor-quality decision-making.

J. Principles for the future: controlling data disclosure

113. Privacy law tends to be based on principles that enable sufficient flexibility to allow privacy risks to be addressed as they evolve. There is value in considering whether additional principles are required to complement existing privacy principles in order to protect personal data from technologically-based privacy incursions.

114. One formulation proposes the following seven principles of data sharing:[81]

1. Moving the algorithm to the data: sharing outcomes rather than sharing the data directly.

2. Open algorithms: open review and public scrutiny of all algorithms for data-sharing and privacy protection, so that errors or weaknesses can be identified and corrected.

3. Permissible use: respect for the (explicit or implicit) permission for uses of the data or "contextual integrity".[82] In a medical context, the explicit

[78] The Tor (anonymity network) router obscures who communicates with whom (i.e., telecommunications metadata), but it is not widely used. Some browsers (such as Firefox and Brave) include a "private browsing" mode that obstructs data collection. The Electronic Frontier Foundation's "Privacy Badger" and New York University's "TrackMeNot" are highly effective, but are not widely adopted.

[79] Office of the Australian Information Commissioner, Australian community attitudes to privacy survey, 2017 and 2013; Deloitte, "Trust starts from within: Deloitte Australian privacy index 2017", 2017.

[80] Ian Goodfellow, Jonathon Shlens and Christian Szegedy, "Explaining and harnessing adversarial examples", ArXiv preprint, 2014.

[81] Alex Pentland and others, "Towards an Internet of trusted data: a new framework for identity and data sharing", 2016.

granting withdrawal of consent has been put into practice in the dynamic consent interface.[83]

4. Always return "safe answers": differential privacy in practice.

5. Data always in encrypted state: encrypted data can be read only by those who know the decryption key.[84]

6. Networked collaboration environments and block chains for audit and accountability.

7. Social and economic incentives.

115. These principles are not necessarily complete solutions in themselves as they in turn raise more questions. For example, transparency is particularly challenging when the techniques used to protect privacy are so sophisticated that only a handful of people have the capacity to understand them. The "open algorithms" principle is a vital first step, but the exact algorithms being used and their implication will still be challenging in practice.

116. Other "principle" approaches have been proposed, such as "agency" and "transparency", with agency including the right to amend data, to blur your data or to experiment with the refineries.[85] The underlying dynamic is the empowerment of individuals and the introduction of a levelling of power between the data companies/holders and the users. Others raise the principles of the opportunity to obfuscate, prevent or opt out of data collection.

117. Overall, the principles of transparency and user control are important so that users can choose what data they reveal without unreasonable loss of facility or services.

118. Above all, attempts to produce big data-open data principles that respect privacy provide a useful starting point for discussion. Whatever principles are adopted, there should be adequate consultation across stakeholders, including civil society organizations, to ensure the fitness of any such principles.

119. Implementing these principles raises questions of the role of government and the type of incentives and regulation that will facilitate the protection of privacy and other human rights and assessing "their comparative impacts on ethical and political

[82] Privacy is defined as "the requirement that information about people ('personal information') flows appropriately, where appropriateness means in accordance with informational norms … Social contexts form the backdrop for this approach to privacy …". See Solon Barocas and Helen Nissenbaum, "Big data's end run around anonymity and consent", in *Privacy, Big Data, and the Public Good: Frameworks for Engagement*, Julia Lane and others, eds. (Cambridge University Press, 2014).

[83] Jane Kaye and others, "Dynamic consent: a patient interface for twenty-first century research networks", *European Journal of Human Genetics*, vol. 23, No. 2 (2014).

[84] Recent advances in cryptography allow multiple parties to jointly compute a function of their private inputs, subsequently revealing only the well-defined outcome. There are very general tools, based on multiparty computation (see, for example, Ivan Damgård and others, "Multiparty computation from somewhat homomorphic encryption", *Advances in Cryptology — CRYPTO*, vol. 7417 (2012); and homomorphic encryption, available from www.microsoft.com/en-us/research/project/homomorphic-encryption/#). Most tools do not run sufficiently fast for big datasets, but simpler variants may in the future. There are many specific protocols that solve specialized problems on large datasets. The general notion of computing on encrypted data works very well for simple computations on one dataset, but may not be feasible for complex computations or datasets distributed over several locations.

[85] Andreas Weigend, *Data for the People: How to Make our Post-Privacy Economy Work for You* (New York, Basic Books, 2017).

values, such as fairness, justice, freedom, autonomy, welfare, and others more specific to the context in question".[86]

120. An innovative information economy would probably achieve greater community support if there was observable adherence by Governments and corporations to strong regulation around the acquisition, sharing and control of people's data.

III. Supporting documents

121. The following documents supporting the present report are available at the website of the Special Rapporteur:[87]

I. Understanding history: de-identification tools and controversies;

II. Engagements by the Special Rapporteur in Africa, America, Asia and Europe;

III. Background on the open letter to the Government of Japan;

IV. Activities of the Task Force Privacy and Personality;

V. Description of the process for the draft legal instrument on surveillance;

VI. Acknowledging assistance;

VII. Procedural clarifications on the thematic report on big data and open data.

IV. Conclusion

122. **The issues identified in the present report are not confined to a few countries. The availability of vast new collections of data allows more and better reasoned decision-making by individuals, corporations and States around the globe, but poor management of privacy puts their potential value at risk.**

123. **Careful understanding and successful mitigation of risks to privacy, other related human rights and ethical and political values of autonomy and fairness are required.**

124. **Data is and will remain a key economic asset, like capital and labour. Privacy and innovation can and do go together. Understanding how to use big data efficiently and how to share its benefits fairly without eroding the protection of human rights will be hard, but ultimately worthwhile.**

V. Recommendations

125. **Pending feedback during the consultation period to March 2018 and the results of ongoing investigations and letters of allegation to Governments, the Special Rapporteur is considering the following recommendations for inclusion an updated version of the present report, which is to be published in or after 2018.**

126. **Open data policies require clear statements on the limits to the use of personal information, based on international standards and principles, including**

[86] Solon Barocas and Helen Nissenbaum, "Big data's end run around anonymity and consent", in *Privacy, Big Data, and the Public Good: Frameworks for Engagement*, Julia Lane and others, eds. (Cambridge University Press, 2014).

[87] See http://www.ohchr.org/EN/Issues/Privacy/SR/Pages/SRPrivacyIndex.aspx; see also www.ohchr.org/Documents/Issues/Privacy/A-72-Slot-43103.docx.

an exempt category for personal information with a binding requirement to ensure the reliability of de-identification processes to render this information appropriate for release as open data, and robust enforcement mechanisms.

127. **Any open government initiative involving personal information, whether de-identified or not, requires a rigorous, public, scientific analysis of data privacy protections, including a privacy impact assessment.**

128. **Sensitive high-dimensional unit-record level data about individuals should not be published online or exchanged unless there is sound evidence that secure de-identification has occurred and will be robust against future re-identification.**

129. **Frameworks should be established to manage the risk of sensitive data being made available to researchers.**

130. **Governments and corporations should actively support the creation and use of privacy-enhancing technologies.**

131. **The following options are to be considered when dealing with big data:**

Governance

(a) **Responsibility: identification of accountabilities, decision-making process and, as appropriate, identification of decision makers;**

(b) **Transparency: what occurs, when and how, to personal data prior to it being publicly available, and its use, including "open algorithms";**

(c) **Quality: minimum guarantees of data and processing quality;**

(d) **Predictability: when machine learning is involved the outcomes should be predictable;**

(e) **Security: appropriate steps to prevent data inputs and algorithms from being interfered with without authorization;**

(f) **Development of new tools to identify risks and specify risk mitigation;**

(g) **Support: train (and, as appropriate, accredit) employees on legal, policy and administrative requirements relating to personal information;**

Regulatory environment

(h) **Ensure arrangements to establish an unambiguous focus, responsibility and powers for regulators charged with protecting citizens' data;**

(i) **Regulatory powers should be commensurate with the new challenges posed by big data, for example, the ability for regulators to be able to scrutinize the analytic process and its outcomes;**

(j) **Examination of privacy laws to ensure they are "fit for purpose" in relation to the challenges arising from technology advances, such as machine-generated personal information, and data analytics, such as de-identification;**

Inclusion of feedback mechanisms

(k) **Formalize consultation mechanisms, including ethics committees, with professional, community and other organizations and with citizens to protect against the erosion of rights and to identify sound practices;**

(l) **Undertake a broad-based consultation on the recommendations and issues raised in the present report, for example the appetite for prohibitions on the provision of government datasets;**

Research

(m) **Technical: investigate relatively new techniques such as differential privacy and homomorphic encryption to assess if they provide adequate privacy processes and outputs;**

(n) **Examine citizens' awareness of the data activities of governments and businesses, the uses of personal information, including for research, and technological mechanisms to enhance individual control of their data and to increase their ability to utilize it for their needs.**